OEQ AUTHORIZATION, FISCAL YEARS 1989–1993

HEARING

BEFORE THE

SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

OF THE

COMMITTEE ON MERCHANT MARINE AND FISHERIES HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

H.R. 1113

A BILL TO AUTHORIZE APPROPRIATIONS FOR THE OFFICE OF ENVIRONMENTAL QUALITY FOR FISCAL YEARS 1989-1993 AND OVERSIGHT OF THE NATIONAL ENVIRONMENTAL POLICY ACT

MARCH 7, 1989

Serial No. 101-6

Printed for the use of the
Committee on Merchant Marine and Fisheries

U.S. GOVERNMENT PRINTING OFFICE

97-423 ⇆ WASHINGTON : 1989

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

H561-43

COMMITTEE ON MERCHANT MARINE AND FISHERIES

WALTER B. JONES, North Carolina, *Chairman*

GERRY E. STUDDS, Massachusetts
CARROLL HUBBARD, JR., Kentucky
WILLIAM J. HUGHES, New Jersey
EARL HUTTO, Florida
BILLY TAUZIN, Louisiana
THOMAS M. FOGLIETTA, Pennsylvania
DENNIS M. HERTEL, Michigan
ROY DYSON, Maryland
WILLIAM O. LIPINSKI, Illinois
ROBERT A. BORSKI, Pennsylvania
THOMAS R. CARPER, Delaware
DOUGLAS H. BOSCO, California
ROBIN TALLON, South Carolina
SOLOMON P. ORTIZ, Texas
CHARLES E. BENNETT, Florida
THOMAS J. MANTON, New York
OWEN B. PICKETT, Virginia
JOSEPH E. BRENNAN, Maine
GEORGE J. HOCHBRUECKNER, New York
BOB CLEMENT, Tennessee
STEPHEN J. SOLARZ, New York
FRANK PALLONE, JR., New Jersey
GREG LAUGHLIN, Texas
NITA M. LOWEY, New York
JOLENE UNSOELD, Washington

ROBERT W. DAVIS, Michigan
DON YOUNG, Alaska
NORMAN F. LENT, New York
NORMAN D. SHUMWAY, California
JACK FIELDS, Texas
CLAUDINE SCHNEIDER, Rhode Island
HERBERT H. BATEMAN, Virginia
JIM SAXTON, New Jersey
JOHN R. MILLER, Washington
HELEN DELICH BENTLEY, Maryland
HOWARD COBLE, North Carolina
CURT WELDON, Pennsylvania
PATRICIA SAIKI, Hawaii
WALLY HERGER, California
JIM BUNNING, Kentucky
JAMES M. INHOFE, Oklahoma
PORTER J. GOSS, Florida

EDMUND B. WELCH, *Chief Counsel*
BARBARA L. CAVAS, *Chief Clerk*
GEORGE D. PENCE, *Minority Staff Director*
DUNCAN C. SMITH III, *Minority Chief Counsel*

SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

GERRY E. STUDDS, Massachusetts, *Chairman*

WILLIAM J. HUGHES, New Jersey
THOMAS R. CARPER, Delaware
DOUGLAS H. BOSCO, California
SOLOMON P. ORTIZ, Texas
THOMAS J. MANTON, New York
ROBIN TALLON, South Carolina
GEORGE J. HOCHBRUECKNER, New York
STEPHEN J. SOLARZ, New York
FRANK PALLONE, JR., New Jersey
JOLENE UNSOELD, Washington
EARL HUTTO, Florida
BILLY TAUZIN, Louisiana
ROY DYSON, Maryland

DON YOUNG, Alaska
CLAUDINE SCHNEIDER, Rhode Island
HERBERT H. BATEMAN, Virginia
JIM SAXTON, New Jersey
JOHN R. MILLER, Washington
HOWARD COBLE, North Carolina
CURT WELDON, Pennsylvania
PATRICIA SAIKI, Hawaii
WALLY HERGER, California

BILL WOODWARD, *Staff Director*
JEFF PIKE, *Senior Professional Staff*
WILL STELLE, *Counsel*
ROD MOORE, *Minority Professional Staff*

CONTENTS

	Page
Hearing held March 7, 1989	1
Text of H.R. 1113	33
Statement of:	
Hill, A. Alan, chairman, Council on Environmental Quality	3
Prepared statement	39
Ortman, David E., Friends of the Earth (prepared statement)	88
Saxton, Hon. Jim, a U.S. Representative from New Jersey	2
Studds, Hon. Gerry E., a U.S. Representative from Massachusetts, and chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment	1
Williams, Larry, director, International Program, Sierra Club (prepared statement)	98
Wilson, Jennifer Joy, assistant administrator for external affairs, U.S. Environmental Protection Agency	6
Prepared statement	59
Wirth, David, staff attorney, Natural Resources Defense Council	8
Prepared statement	68
Communications submitted:	
Hill, A. Alan (Council on Environmental Quality): Letter of March 8, 1989, to Hon. Gerry E. Studds	94
Wilson, Jennifer Joy, (EPA): Letter of April 11, 1989, to Hon. Gerry E. Studds	111
Wirth, David A. (Natural Resources Defense Council): Letter of March 9, 1989, to Hon. Gerry E. Studds	95

REAUTHORIZATION OF THE OFFICE OF ENVIRONMENTAL QUALITY AND OVERSIGHT OF THE NATIONAL ENVIRONMENTAL POLICY ACT

TUESDAY, MARCH 7, 1989

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT, COMMITTEE ON MERCHANT MARINE AND FISHERIES

Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m. in Room 1334, Longworth House Office Building, the Hon. Gerry E. Studds (chairman of the subcommittee) presiding.

Members present: Representatives Studds, Hughes, Hochbrueckner, Solarz, Pallone, Unsoeld, Coble, Weldon, and Herger.

Staff present: Bill Woodward, Lisa Murray, Will Stelle, Gina DeFerrari, Sue Sponaugle, Joyce Sacco, and Tom Melius.

Mr. STUDDS. The subcommittee will come to order. Sorry for the brief delay.

STATEMENT OF HON. GERRY E. STUDDS, A U.S. REPRESENTATIVE FROM MASSACHUSETTS, AND CHAIRMAN, SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

Mr. STUDDS. We meet this morning to conduct a legislative hearing on H.R. 1113, a bill to reauthorize the Office on Environmental Quality, to ensure the consideration of international environmental impacts in Federal agency actions, and to make certain clarifying amendments to the National Environmental Policy Act.

I want to emphasize that H.R. 1113, as introduced, was intended to provoke discussion, not stifle it. Its language is not set in stone, and we will consider carefully the comments and criticisms of today's witnesses, as well as those we receive from other Federal agencies and the public.

I emphasize this because I do not believe NEPA should ever be amended lightly. This landmark law, which originated 20 years ago in this subcommittee, stands today as the most important environmental statute in the world. It has been tried and tested, and proven at home, and it serves as a model for nations and international organizations abroad.

Like the Constitution, NEPA may need some improvement from time to time, but it is hard to quarrel with the general idea. It simply requires Federal agencies to think in advance about the en-

vironmental effects of actions they propose to take, and to consider alternatives that avoid or minimize environmental harm.

The concerns that prompted the enactment of NEPA—polluted rivers, dirty air, and unplanned development—are still with us. But we did not worry 20 years ago that Earth might some day lose the features that distinguish it from its interplanetary neighbors—a healthy ozone layer, a proper balance between oxygen and carbon dioxide in the atmosphere, and human life.

NEPA was enacted as a charter for our national environment. The time has come to transform it into a charter governing our approach to the global environment. H.R. 1113 takes the first steps in that direction.

It provides that, with certain limited exceptions, NEPA applies to Federal actions of whatever type, wherever taken. It makes it clear that NEPA applies not just to some but to all Federal agencies and regulatory commissions.

And it requires our Government to consider the reasonably foreseeable environmental impacts of our actions, not just on areas within our jurisdiction, but on the atmosphere, the oceans, and in other lands.

All that sounds like common sense. But common sense is not being applied today.

Federal agencies currently make long-range decisions about agriculture, forestry, water resources, coastal zone resources and energy policy with little, or no regard for long-range impacts on the global climate.

We seek, as we should, to take the lead on international environmental issues, and yet today, we are the world's largest generator of the emissions that cause global warming. We are the largest user of the CFCs that deplete the ozone layer, and we are, by far, the world's largest consumer of fossil fuels.

Leadership must begin at home. I am pleased that this subcommittee and this committee are taking the lead—not only the bill we will consider today—but through the Global Environmental Research and Policy Act recently introduced by our Chairman, Walter Jones.

I look forward, in the weeks ahead, to working closely with the Chairman, with other committee members, and with the Administration to forge a unified and effective strategy for responding to the environmental problems that we face, not just as citizens of one country but as citizens of one world.

In that spirit, I welcome our witnesses this morning. I hope we will discuss not just the international aspects of this legislation, but also, the general health of the NEPA process, and the prospects for a new and more prominent role for both CEQ and EPA during the kinder and gentler years ahead.

Without objection, the statement by the gentleman from New Jersey, Mr. Saxton, will appear at this point in the record.

[The statement of Mr. Saxton follows:]

STATEMENT OF HON. JIM SAXTON, A U.S. REPRESENTATIVE FROM NEW JERSEY

Mr. Chairman, thank you for allowing me to express my support for the reauthorization of funds for the Office of Environmental Quality (OEQ) and the expansion of

the National Environmental Policy Act (NEPA) to include and consider the impacts of Federal agency actions beyond our international jurisdiction as well as within.

Expanding NEPA and committing funds to the OEQ are the first of many steps to be taken by the United States as it meets the challenges of environmental stewardship in the global community. By submitting itself to the same standards expected of private citizens and international members, the United States sets a precedence and an agenda for acting as a responsible industrial nation.

As we all know, industrial and technological advancements have redefined the size and capacity of planet Earth. Although resources are more accessible than ever before, their limits as finite have become a stark reality. The road to adopting national and individual behaviors to abate such crises as the greenhouse effect, ozone depletion, acid rain, and the general fouling of our land and waters, will be a long, hard-fought battle. It will also necessarily involve a variety of approaches.

I am a firm believe in spontaneous market incentives which emerge in response to newly realized needs and priorities. The soaring costs of solid waste in proportion to shrinking landfill capacity, or high cost energy rates created by depleted supply induce the necessary and environmentally sound behaviors of recycling and energy conservation at a fundamental level of our society—the individual. However, in a society and world as complex as our own, information and coordination must often be mechanically provided and directed. Such is the case with Federal level activities and the far reaching effects their actions often set into motion.

It will be imperative that the individuals, communities and nations of this world begin to view their actions in a cumulative context with respect to the environment. The expansion of NEPA to include consideration of impacts outside our national jurisdiction is not only a moral choice, but a rational decision as well. The reauthorization of OEQ's funding is part of reaffirming our commitment to the challenges before us.

Mr. STUDDS. And we will proceed with our witnesses, I guess in the order in which you appear.

First, Mr. Alan Hill, Chairman of the Council on Environmental Quality. Mr. Hill.

STATEMENTS OF A PANEL CONSISTING OF A. ALAN HILL, CHAIRMAN, COUNCIL ON ENVIRONMENTAL QUALITY; JENNIFER JOY WILSON, ASSISTANT ADMINISTRATOR FOR EXTERNAL AFFAIRS, U.S. ENVIRONMENTAL PROTECTION AGENCY; AND DAVID WIRTH, STAFF ATTORNEY, NATURAL RESOURCES DEFENSE COUNCIL

Mr. HILL. Good morning, Mr. Chairman.

Mr. STUDDS. Good morning.

Mr. HILL. I have submitted a full statement for the record, and ask that it be included. I have a briefer version for you this morning.

Mr. STUDDS. We appreciate that. All the statements will appear in their entirety in the record, and you are not only free, but beseeched to summarize. Thank you.

Mr. HILL. I welcome the opportunity to appear this morning before you in support of the reauthorization of the Office of Environmental Quality.

As you know, OEQ was established to, among other things, provide professional and administrative staff for the Council on Environmental Quality. This morning, I want to describe, briefly, some of the recent CEQ/OEQ activities, and then briefly comment on H.R. 1113.

One of the Council's most important NEPA activities concerns the resolution of interagency environmental disputes. Under section 102(2)(C) of NEPA, Federal agencies may review environmental impact statements, and may ask CEQ to make findings and rec-

ommendations regarding the acceptability of the anticipated environmental effects.

In addition, section 309 of the Clean Air Act directs the Environmental Protection Agency to review and comment on the environmental impacts of proposed Federal projects and agency regulations, and to refer unsatisfactory proposals to CEQ for resolution.

A referral currently before the Council involves a proposal by the Department of Interior's Bureau of Reclamation to renew long-term water contracts for the Orange Cove and other Friant Unit irrigation districts of the Central Valley Project in California.

The Department of Interior has taken the position that NEPA does not require the preparation of an environmental impact statement for the renewal of the contracts.

EPA referred this matter, stating that "making irretrievable long-term commitments of water use without benefit of an EIS violates the purposes and intent of NEPA."

The Council published a Federal Register notice on February 9th of this year, seeking public comment on whether the referral raised issues of national importance, whether CEQ should proceed with consideration of the issues raised in the referral, and suggestions as to procedures to be followed, should the referral be accepted.

By the close of the comment period on February 28th, we had received almost 30 comments from State and local representatives, as well as from concerned individuals and organizations.

The Department of Interior also responded to the matters raised in EPA's referral letter by challenging EPA's authority to refer and CEQ's authority to hear this matter. CEQ will be working to resolve this referral in the coming weeks.

The most recently completed referral concerned low-level military training flights over Cape Lookout National Seashore in North Carolina.

In its findings and recommendations on that referral, the Council was unable to conclude that there were any reasonable alternative sites available to the United States Marine Corps for its flights, and that therefore, the Marine Corps, and the National Park Service which manages the seashore, should work together to mitigate the expected noise impacts from the overflights.

The Council also recommended that the Federal Aviation Administration, the agency which will give final authority for the overflights, conduct a cumulative impact analysis as part of its NEPA documentation for the special use airspace designation.

On another issue before the Council, we are considering the topic of global climate change. I have worked with the Domestic Policy Council on this issue, including participating in discussions regarding implementation of the Montreal Protocol.

In addition, as this subcommittee knows, we have been developing guidance to the Federal agencies on how they should consider stratospheric ozone depletion and global warming in the context of NEPA. This guidance is still in draft form, and will undergo interagency review and comment in the near future.

H.R. 1113 would not only authorize appropriations for OEQ, but also amend NEPA in several significant ways. NEPA has worked well, as you have noted, Mr. Chairman, for the last two decades, and amendments to the statute should be made only after careful

consideration. Amendments should not be made when regulatory modifications or guidance from the Council would suffice.

With that thought, I will briefly comment on the NEPA amendments proposed in the bill.

Section 1 seeks to apply the NEPA process to actions taken by the Federal Government outside of the boundaries of the United States. This is an issue which has been hotly debated, and is one on which the current Administration has not, as yet, developed a position.

Section 2 seeks to amend section 201 of NEPA by requiring that the Council annual report become more of a policy document, rather than a document which must comprehensively review the status of all environmental media. I support this amendment and believe that such an annual report would be a useful one.

Other Federal agencies, including EPA, already publish information on conditions and trends in the environment, making the CEQ annual report less important as a resource tool. The Council's time, energy, and resources would be better spent focusing on policy development rather than data collection.

Section 3 seeks to provide statutory authority for the CEQ regulations promulgated in 1978 pursuant to Executive Order No. 11991. I support this provision and believe that it would end a continuing, and sometimes disruptive debate, over the applicability of CEQ's NEPA regulations to independent regulatory agencies.

Section 4 of the proposed bill seeks to require each Federal agency to review "a statistically significant sample of EISs in which measures were specified for the mitigation of any adverse impact on the environment that was predicted to occur as a result of the agency action."

While I believe that a review of mitigation implementation may be appropriate, the process described in the bill could prove to be quite burdensome on CEQ and other Federal agencies.

I suggest that Federal agencies be required to undertake a one-time review of the mitigation measures imposed in a representative sample of EISs, the accuracy of the predictions made in those EISs, and the effectiveness of the mitigation measures.

The agencies would submit their analyses to CEQ which would report to Congress, and make recommendations regarding the need for additional periodic mitigation implementation reviews.

Section 5 would have CEQ issue regulations requiring Federal agencies to fully consider the impacts of their actions on areas outside the jurisdiction of the United States, including the impacts of proposed Federal actions on global climate change, depletion of the ozone layer, sea level rise, and other phenomena of international environmental concerns.

As noted above, the question of the extraterritorial application of NEPA is one which has been debated for almost 19 years, and is one on which the current Administration has not yet taken a position.

WIth respect to other global environmental issues, however, this subcommittee is aware that the Council is already addressing the question of how Federal agencies should consider the impact of their actions on global climate change, including stratospheric

ozone depletion and global warming. Neither a statutory nor a regulatory change is needed to consider these issues in EISs.

Section 5 would authorize $1 million annually for OEQ for fiscal years 1989 through 1993. President Reagan's budget request for fiscal year 1990 was $861,000, of which $575,000 would be spent for the requirements of OEQ. Negotiations between the Bush Administration and the Congress may result in a revision of the $575,000 request.

This completes my opening remarks. I have submitted a full statement for the record. I would be pleased to answer questions from the subcommittee.

[The statement of Mr. Hill can be found at the end of the hearing.]

Mr. STUDDS. Thank you very much, sir. We go next to Mrs. Jennifer Joy Wilson of the EPA. Mrs. Wilson.

STATEMENT OF MRS. WILSON

Mrs. WILSON. Good morning, Mr. Chairman. I am pleased to join you today to discuss the National Environmental Policy Act. EPA supports reauthorization of CEQ. We agree with you, that NEPA is fundamentally sound and has worked well over the years as Federal agencies have progressed in their understanding and application of NEPA's concepts and procedures.

Federal decision-makers now routinely incorporate in project planning stages, the consideration and documentation of environmental issues. Several foreign nations have developed NEPA-like environmental review requirements, as have 27 States.

Under our State Revolving Loan Fund, the successor to the Federal Waste Water Treatment Grants Program, EPA is encouraging NEPA-like procedures under State law, suited to State needs and conditions.

The NEPA process has resulted in substantial environmental and economic benefits. We have determined that our own environmental reviews for the Waste Water Treatment Program resulted in protection of environmental values and control of induced development.

Half of such projects realized cost reductions owing to changes identified in the EIS process.

Section 309 of the Clean Air Act requires EPA to review and comment on the environmental impact of a broad range of Federal agency actions. Should an action be found unsatisfactory from the standpoint of public health and welfare, or environmental quality, EPA would refer the matter to CEQ for negotiation and resolution.

Further, under section 309, both CEQ and EPA achieved much by working with the agencies involved at the draft EIS stage, well before referral becomes necessary.

CEQ issuance of NEPA guidance and regulations is key to their ability to coordinate environmental policy. CEQ's role may become more important as more complex environmental issues involving many agencies, cross-media concerns, or international issues arise.

Long-term strategic planning is a service CEQ has provided with sufficient expertise to independently analyze issues, and your pro-

posal to include strategic recommendations in CEQ's annual report is one which we support.

CEQ has another role in the increasingly important area of international cooperation on environmental issues, providing advice and assistance to other countries and international organizations on the legal, procedural, and institutional aspects of NEPA.

EPA has the following views on provisions of H.R. 1113 amending NEPA.

One. EPA supports the provision which would make explicit the authority of CEQ to promulgate regulations governing Federal agency implementation of NEPA.

Two. The bill would require that no Federal action is exempt from NEPA unless explicitly exempted by law. We believe that CEQ and the courts have adequately clarified NEPA applicability to the domestic activities of Federal agencies, and therefore, it is not clear what the effect of this amendment would be.

As presently worded, this provision could be disruptive to environmental review procedures currently in place at EPA.

Three. The bill would require Federal agencies to periodically sample their EISs to determine if mitigation measures are being carried out. We agree with the thrust of this proposal but recommend that agencies carry out a one-time study of NEPA mitigation under CEQ direction, after which CEQ would report findings and recommendations to Congress.

Four. The bill would extend NEPA EIS provisions to major Federal actions beyond U.S. boundaries. Proper Federal attention to the environmental impacts of our actions abroad is a goal we share, and, indeed, is reflected in Executive Order 12114.

EPA is not convinced that NEPA, a domestic U.S. statute, would necessarily achieve the desired results overseas, but this Administration has not yet established a position on this issue.

Five. The bill would require CEQ to issue regulations requiring consideration of specific environmental impacts outside the U.S. such as global climate, the ozone layer, and sea level.

We do not believe that an amendment requiring specific regulations is required since CEQ-proposed guidance on this issue will soon receive interagency review.

Again, our goal is the same, and, indeed, the President requested a similar focus in his budget address.

In conclusion, NEPA is one of the fundamental keys to the vision we share of a clean and healthful environment while sustaining economic growth.

Successful application of NEPA depends, in large part, on maintenance, and perhaps enhancement of the existing system of checks and balances, and CEQ is a key part of that system.

That concludes my summary statement, Mr. Chairman. I would be happy to answer any questions you may have.

[The statement of Mrs. Wilson can be found at the end of the hearing.]

Mr. STUDDS. Thank you very much. We will go to Mr. David Wirth of the Natural Resources Defense Council. Mr. Wirth.

STATEMENT OF MR. WIRTH

Mr. WIRTH. Thank you very much, Mr. Chairman. Today, I am representing not just NRDC, but also the half million members of the Sierra Club. John Muir, the founder of the Sierra Club once said, and I quote: "When we try to pick out anything by itself, we find it hitched to everything else in the universe."

Indeed, so central is this concept to the mission of the Sierra Club, that it now appears on their letterhead and accompanies every piece of correspondence from that organization.

Mr. Chairman, in my testimony today, I would like to discuss the portions of H.R. 1113 that would apply to extraterritorial impacts, and also to impacts on the global commons.

I would be glad to discuss any other aspects of the bill, but this is our principal interest in this piece of legislation.

Mr. Chairman, we now know that the principle articulated by John Muir applies not just within our own borders but globally, and within recent years we have had some rather shocking examples of this fact.

First of all, the problem of stratospheric ozone depletion from chlorofluorocarbons and halons. We all know what the problem is here, but I would just identify to the committee that now, in 1989, is 15 years after this problem was identified in the laboratory and originally communicated to the public.

While NRDC welcomes the initiatives of the Bush Administration and the Montreal Protocol very much, we believe that, if anything, these actions should have come earlier.

Second, we are very concerned about the problem of global climate disruption from the greenhouse effect. This is an issue that has recently come to public attention and has achieved a very high public profile.

I would just note that this is a problem that dwarfs many of the environmental problems of the past, and is one that demands immediate attention. We all know that uncontrolled emissions of carbon dioxide, CFCs, nitrous oxide, and methane are contributing to this problem, and that the problem is exacerbated by forest loss worldwide, particularly in tropical countries such as Brazil and Indonesia where deforestation is proceeding at the furious pace of about 27 million acres annually.

In fact because of forest loss, Brazil may already be the third-largest contributor to the greenhouse problem.

Mr. Chairman, those are problems that deal with the global environment, or the global commons, if you will.

Actions of U.S. Federal agencies also can have profound adverse impacts on the environment of foreign countries, and I would like to identify to the committee one particular area where these impacts are particularly likely to occur, and that is in development assistance.

Development assistance provided by the United States comes in two general forms—either bilaterally, principally through the Agency for International Development, or multilaterally, through the World Bank and the Regional Development Banks for Africa, Asia, and Latin America.

Let me choose a few examples from each area to highlight the need for the application of environmental impact assessment and the NEPA process to development assistance.

In the bilateral area, NRDC has recently been examining a case study of two proposed projects that are under consideration by USDA, the Department of Agriculture, and USAID.

These two projects are called MOSCAMED and CAPMED. MOSCAMED is an attempt to eradicate the Mediterranean fruit fly from all of Guatemala, and CAPMED would extend that eradication program all the way through Central America to the Darien Gap in Panama.

At least as envisioned until recently, these two programs involved extensive reliance on aerial spraying of the pesticide Malathion, which is a non-selective insecticide that could have adverse impacts on many other species, including beneficial ones, in addition to Medfly.

These two programs, also as envisioned until recently, involved the application of fumigants such as ethylene dibromide, EDB, which is banned in this country, and methyl bromide to treat produce that is moving from a fly-infested area to a fly-free zone.

Mr. Chairman, it was only after this program had been underway for 6 years that the U.S. Agency for International Development decided to perform an environmental impact assessment.

That environmental impact assessment documented some rather shocking abuses.

First of all, workers were sleeping and playing cards in the fumigation facilities, exposing themselves to the risk of cancer and other diseases.

Second, the EIA documented that entirely apart from environmental considerations, this project is wasteful and unnecessary. Only about 1 percent of the Medflies coming into the United States come from Guatemala.

Unfortunately, however, MOSCAMED is, in the international area, something of a success story. While we would consider an environmental impact assessment on a domestic project that was done 6 years after the beginning of the project a horror story, internationally it is really quite amazing that this environmental impact assessment was done at all.

In fact the Agency for International Development continues to assert that the agency did this only as a discretionary matter and not as required under their regulations.

Let me turn, for a second, to the issue of multilateral development assistance, as I said, provided through the World Bank and the Regional Banks for Latin America, Asia, and Africa.

NRDC and other organizations have done case studies of projects financed by these institutions in Africa, Asia, and Latin America, and have closely examined the procedures followed by the banks.

Those case studies have demonstrated harm from these projects to ecosystems such as tropical forests, wetlands, grasslands, and marine ecosystems.

In fact, Mr. Chairman, NRDC has recently prepared a set of voting instructions dealing with projects that could impact tropical forests and wetlands that have recently been adopted by the Secretary of the Treasury.

At the request of the Treasury Department, we are also currently involved in a study of energy sector lending priorities by these institutions, and of course this is an area that can have profound environmental impacts.

Let me make three major points about the way these institutions are organized, and why we can anticipate such impacts from them.

First of all, the World Bank and the regional banks are dominated by economists that tend to view the world in harsh dollars-and-cents terms. In fact we were recently talking to a power engineer at the World Bank, who said that if one could quantify the environmental externalities with respect to a dam in Brazil, it would increase the price by 25 percent. I consider that to be a shocking figure.

Also, we have documented that the larger imperatives of these institutions to move money out the door quickly tends to discourage quality generally, and, in particular, environmental quality.

Second of all, there is a serious lack of public accountability by these institutions, and in fact the public in the countries concerned is often not informed of their activities.

Third, these institutions do not have any requirements to perform environmental impact assessments despite the fact that they assert that they are adhering to UNEP and OECD standards.

Mr. Chairman, for the reasons that I have just stated, we are quite supportive of the initiative in your bill to expand NEPA, and to make it clear that NEPA applies with full force to impacts occurring on the global commons, and with respect to extraterritorial impacts.

I agree with the previous witnesses and yourself, that one should not amend NEPA lightly. It is akin to the Constitution. But we believe that this is a very serious area, and one that really requires clarification of the sort that is proposed in your bill.

Thank you very much.

[The statement of Mr. Wirth can be found at the end of the hearing.]

Mr. STUDDS. Thank you very much, Mr. Wirth.

I have more questions than I should legitimately consume time for in the first round, so I am going to ask my staff politely to inform me when my time is up, and we will have another round or two.

Mr. Hill, a Washington Post story on January 11th describes CEQ as "largely moribund." Do you feel moribund? How do you feel?

Mr. HILL. I hope I do not look that way, Mr. Chairman.

Mr. STUDDS. What is your reaction to that?

Mr. HILL. No. I do not. That is a term the writer of that article chose to use on his own. I hope it does not indicate some anger with me for not returning his call the day before. However, the Cabinet Secretary and I both did not return those telephone calls. We were in deep conversation with regard to the global guidance document.

Mr. STUDDS. That is your only reaction to that?

Mr. HILL. Yes. I think the Council has been quite active and doing a very outstanding job with limited resources.

Mr. STUDDS. On that line, your proposed budget, in total, for fiscal 1990, OEQ and CEQ, is $861,000, an increase of $11,000 from the current year, which is not a heck of a lot, given your responsibility for saving the planet.

What was your budget in fiscal 1980? Do you know?

Mr. HILL. Let me get to——

Mr. STUDDS. I do, in case you do not.

Mr. HILL. I have an entire list. In 1980, the President's request was $3,126,000 and the Congress appropriated the same.

Mr. STUDDS. Yes.

Mr. HILL. Now, for instance, in 1984, the President requested $913,000 and the Congress appropriated $700,000 to the CEQ account.

Mr. STUDDS. Right. So 10 years ago, roughly 8 years ago, your budget was four times what it is today. Would you feel any less moribund if we were to triple your budget?

Mr. HILL. It certainly would give the Council—additional funds, of course, would allow the Council to undertake more activities.

Mr. STUDDS. It is a large planet.

Mr. HILL. When the decision was made to reduce the budget—to keep the Council and reduce the budget, we had to limit, and I had to sit and think through, very carefully, what activities were of the most importance and what were of lesser importance, and make those priorities and adjust accordingly.

Mr. STUDDS. And presumably chuck roughly three out of four. In your statement you say, and I quote, "that neither a statutory nor a regulatory change is needed to require Federal agencies to consider global environmental issues in the EISs they prepare."

Isn't it true that CEQ recently conducted a survey and found that only three EISs, and none since 1978, have ever considered those issues?

Mr. HILL. I cannot recall if it was three or five, but there were a very limited number. That is why we——

Mr. STUDDS. And none in the last 11 years, since 1978?

Mr. HILL. All right. None.

Mr. STUDDS. None. You do not see a certain basis for a question based upon your statement in your——

Mr. HILL. That is why we began the process of developing guidance for Federal agencies. Now guidance is not an amendment to the regulations nor an amendment to NEPA. Guidance is a standard document issued from time to time by the Council, that indicates to Federal agencies how to handle a given issue, or a given technique.

Mr. STUDDS. All right. Now you say your proposal issued guidance to Federal agencies to consider global climate change.

Mr. HILL. Yes.

Mr. STUDDS. Under NEPA?

Mr. HILL. Yes.

Mr. STUDDS. Is currently being reviewed by a domestic policy working group?

Mr. HILL. Yes.

Mr. STUDDS. That is an immense relief. But do you have an assurance that your proposal will be approved by the Administration, having been rejected, as I recall, by the preceding Administration?

Mr. HILL. It was not rejected. It was put on the shelf for the new Administration to consider.

Mr. STUDDS. Yes.

Mr. HILL. As I indicated in my letter, when I sent you the draft, per your request, of the guidance, that will be undergoing interagency review. We have produced a product, and the normal next step is for it to be submitted to the agencies for review and comment.

We had sent it to the Justice Department earlier, and a question—the same January 11th article—the question came up with regard to retroactivity. Do we have to go back and redo all old EISs, and Justice suggested we make this prospective, not retrospective.

Mr. STUDDS. Well, let me ask you this. Assuming, for the moment, that you got Administration approval, do we have any assurance, or can we have any assurance, that even in that case the requirement to study global impacts would not be challenged by some Federal agencies, or by private parties in the courts?

Mr. HILL. It might well be.

Mr. STUDDS. It might well be. Well, if you accept the principle that Federal agencies should consider global impacts, what conceivable objection could you have to enshrining that principle in the law?

Mr. HILL. Well, the concern here is that we are dealing today with global climatic change topics, and a year from now there may be some other concern. So are we going to go back and annually amend the National Environmental Policy Act until it contains a checklist, and the idea is not to be exclusive in the law. The law is a very general one which is to be applied by agencies using their own expertise, their particular points of view in doing these analyses.

The Council feels that we can, by issuing guidance, better manage the process.

Mr. STUDDS. Well, that is a lengthy response, but I am not sure that it says very much. The world is turning a lot faster than this Administration appears to be. This is the one that was going to "hit the ground running," as I recall.

You have just managed to say that some matter had been studied for 19 years, and it was under active consideration by the Administration. That is something short of reassuring.

Let me pause for a moment and I will come back again. The gentleman from North Carolina.

Mr. COBLE. Thank you, Mr. Chairman. Mr. Hill, I will direct this to you, but I will be pleased to hear from either of you. Mr. Wirth touched upon it during his statement.

In your judgment, what kinds of Federal actions have an impact on ozone depletion, or global warming?, number one, and, number two, to your knowledge, are there Federal agencies involved in those activities currently taking global environmental issues into account in their environmental impact statements, and in the consideration of alternative policies?

Mr. HILL. We do not see an environmental impact statement as it is being drafted by the agency. We are aware of a multitude of activities of Federal agencies. Let me give you some examples.

The Department of Defense is on a very aggressive program to reduce or recycle the use of chlorofluorocarbons that had been used for cleaning electronic equipment, and so forth.

Similarly, they are reducing the use of halons which are used basically for fire suppression. As an aside, one of the military services used to vent fire extinguishers into the atmosphere, and these were halons going in the atmosphere. They capture that now and recycle.

So those things are going on. There are other activities that are under way, that will have an impact. The U.S. Forest Service, for instance, is considering the broad, broad question of the management of the national forest system in terms of global warming, in terms of the forest being used as a sink for carbon dioxide build-up. So there are those.

I would not say, across the board, everything, the sky is all blue. As with anything else in human life, there are some that are farther ahead than others on a given topic. But agencies are beginning to pay much closer attention. NASA is well involved. The Nuclear Regulatory Commission regularly considers CO2 contribution to global climate change in EISs performed for nuclear power plants.

Mr. COBLE. Mr. Wirth, did you want to add anything to that because you touched on global warming in your comment?

Mr. WIRTH. Yes. Thank you. Actually, we have done a fairly thorough review of the sorts of Federal activities that could have an impact on, or could be affected by global warming, and that appears at page 11 of my prepared testimony. I can just summarize it, very briefly.

First of all, there are numerous Federal actions that have impacts on the emissions of greenhouse gases such as carbon dioxide. One of them in fact we have recently brought a law suit on, and this is a rollback of the vehicle fuel efficiency standards for model year 1989.

Obviously if cars get fewer miles to the gallon they emit more carbon dioxide per mile travelled.

A second is Federal actions that affect patterns of energy consumption such as purchases of insulation for Federal buildings, even purchases of lighting in this room. If one were to purchase efficient lighting as opposed to inefficient lighting, we can save some carbon dioxide emissions.

Another is actions of the Forest Service that could affect forest cover, such as decisions to log, or not to log.

And then there is a broad category of actions that could be affected by the impacts of global warming, could suffer from them, and one should plan for those impacts. One of the impacts is sea level rise. The siting of Federal facilities, such as hazardous waste facilities, can be affected by this phenomenon. All these things can be affected by sea level rise.

Second, our agricultural and forest programs could be affected by shifts in agricultural patterns or changes in local climate. Those are just some of the examples that we have come up with, and, as I say, they are discussed in somewhat more detail in my prepared testimony.

Mr. COBLE. Thank you, sir. Mrs. Wilson, did you want to respond?

Mrs. WILSON. I wanted to point out that while the Forest Service and National Park Service are looking at the issue of letting their forests and parks burn, naturally, when forest fires occur, they are also examining the impacts of the carbon dioxide effects emissions.

Also, I think one of the most significant things that needs to begin is the inclusion in environmental impact statements of the impact, perhaps on a 50-year strategic, forward-looking scale, of increased warming on Federal projects. I have in mind such as a dam, a coastal development, or anything where future sea level rise, might have an impact.

Mr. COBLE. Thank you. Mr. Chairman, do I have time for another? Have I exhausted my time?

Mr. STUDDS. Go ahead.

Mr. COBLE. To Mr. Hill. Mr. Hill, the CEQ has three members, as you know. Do Council Members, as well as the Chairman, play a significant role in directing staff activities, et cetera?

Mr. HILL. They do on specific assignments. The Members and Chairman have a history of relationships over the full 19-year range of the life of the Council. When a member is working on a specific project, naturally they will work with staff on that given project.

I have suggested, recently, that some change in the organization of the Council be made—it is being considered at this point—that would expand the number of Members to four, make them advisory to the Chairman, and make them part-time.

Part of this is directed to eliminating the tension as to the role of the Chairman vis-a-vis the role of the Members. Secondly, it has a very heavy financial impact on the budget of the Council, and we have a personnel cost, PC&B number in the Council of $650,000, and the Members cost $100,000 each. That is a fairly heavy drain on the resources of the Council.

So, as I said, that is under consideration. The Members do work with staff and direct staff on specific projects.

Mr. COBLE. Thank you, sir. Thank you, Mr. Chairman.

Mr. STUDDS. The gentleman from New Jersey.

Mr. HUGHES. Thank you, Mr. Chairman, and good morning. I, too, want to welcome the panel, and thank them for their testimony.

I would like to pick up, Mr. Chairman, on something that you touched upon in your initial colloquy with Mr. Hill.

Relative to H.R. 1113, I really do not understand the basis for your opposition. Is it philosophical? Is it a feeling that it is unnecessary, or, just what is the opposition?

You know, it is very seldom that we have a department or agency come in here and suggest that they are not in favor of getting additional power.

Mr. HILL. It is a feeling—let's say it is a philosophical point. I do not believe that we should amend the National Environmental Policy Act for new issues as they arise, and specifically enumerate those issues in the statute, because we will end up, another 20 years out, with a long list of specific items.

Whereas the National Environmental Policy Act is a very general statute, and it gives Federal agencies the flexibility to address environmental concerns in terms of that agency's own responsibility.

So I am saying there are other ways to reach the issue we are talking about, other than amending the statute.

Mr. HUGHES. But obviously your Council is specifically interested in environmental concerns.

Mr. HILL. Yes.

Mr. HUGHES. Most of the agencies of Government are not. They have other missions. What mechanisms are in place to guarantee that due account is given to international environmental concerns?

Mr. HILL. Well, first——

Mr. HUGHES. Is there a mechanism to do that?

Mr. HILL. Let me begin at the beginning here.

First, we have the regulations promulgated by the Council to guide the environmental impact assessment process in the Federal Government. The legislation we are considering today would make the authority for those regulations statutory.

Second, you have a class of actions that may be taken by the Council, which comes to issuing guidance on a general topic, which reaches counseling with individual agencies. The referral process where one agency may refer a given disagreement with another agency to the Council for consideration, and the rendering of an opinion.

So you have that full range of activities. I would say that the majority of the resources of the Council are dedicated to ensuring that the NEPA process operates and operates well.

We have a legal staff of three professionals who spend almost all of their time just working on this process.

Mr. HUGHES. Well, I can believe that. Three staffers attempting to deal with all the international as well as domestic environmental concerns—I can imagine that they are not going to work themselves out of a job. I suspect that, if anything, we should be moving in the opposite direction.

You have gone from $3 million down to under $800,000 in budget at a time when the environmental problems in this country, and internationally, have probably doubled, if not tripled in many areas. So it is obvious you do not have the resources, and you do not have the mechanisms in place, it seems to me, to really get a fair debate within the agencies of government as to what impacts their decisions are going to have on international environmental concerns as well as domestic concerns.

And my question was—I realize that you can give advice, you can give some guidance—but there is no mechanisms, is there, presently, to ensure that an agency, or department issuing regulations, granting licenses, contracting for projects, will seriously take into account the environmental impacts? That is my question.

H.R. 1113 provides a mechanism, and I hear your criticism to be one of, really, a piece of legislation that is generic in nature, and you do not want to enumerate specific international concerns. So how would you improve it?

How would you improve the legislation to make it acceptable, and yet accomplish what is intended by H.R. 1113?

Mr. HILL. I think in my opening statement I tried to touch on that. Let me cast this in a different way. If we begin amending NEPA, and start to develop an exhaustive list of impact by impact that should be considered, there is a great chance we are going to miss some impact.

Mr. HUGHES. We'll go back and fix it.

Mr. HILL. One of the unique things about NEPA——

Mr. HUGHES. I mean, we do that all the time. We cannot possibly contemplate every variable, and we are forever amending when circumstances change. When a new phenomenon comes to our attention that we have perhaps not anticipated, we amend. That is the beauty of the legislative process, but is that an argument for doing nothing?

Mr. HILL. Well, that characterization that the process is doing nothing is——

Mr. HUGHES. Well, doing very little. Let's put it that way. Your role is that of—basically advisory. You have limited resources.

Mr. HILL. Yes. But the Federal agencies are required to do these analyses—these environmental impact statements, environmental assessments, and so forth. I believe the statistics would show a consistent decline in the number of lawsuits filed over environmental impact assessment, over EISs. This shows that the process has gained a degree of stability and those who manage that process are gaining a degree of expertise, and those that are participating in the process—especially environmental groups, and others—are finding a great degree of comfort in stability in the process.

And the stability factor is a very important one. We are down from roughly 180 to about 80 lawsuits filed a year over the last 15 to 17 years. That is a sign to me that people are becoming better able to handle the process.

Now, as we have to steer this process to meet various issues, I feel it is best for the Council to issue guidance, rather than enter into amendment of the National Environmental Policy Act.

Mr. HUGHES. Thank you.

Mr. STUDDS. I thank the gentlemen. Let me just observe, before I go to the gentleman from Pennsylvania, that the section to which Mr. Hughes and I were referring in the bill, that would direct the Council to issue regulations—if it makes you feel better—is not drafted as an amendment to NEPA.

It is drafted as a freestanding provision. That ought to address some of your philosophical and/or other kinds of concerns.

The gentleman from Pennsylvania.

Mr. WELDON. Thank you, Mr. Chairman.

I just want to start out by thanking the three witnesses for appearing today, and also thank the subcommittee Chair and ranking member, and my colleagues for incorporating into H.R. 1113 an amendment that I offered last year, which in fact I think begins to allow us to have an ongoing assessment process and place to look at required environmental impact statements.

As someone who spent 10 years in local office at the county and local level, I have not been satisfied with what I think has been a lack of the review of requirements mandated through environmental impact statements, and whether or not we are actually adher-

ing and implementing those same requirements. And my amendment would in fact require us to do that on a sporadic basis.

I am a very ardent supporter of this bill, and will follow it through, and hopefully see us get it passed by both the House and the Senate this year, and ultimately become law.

My one question I have is regarding the amount of money necessary. I too question whether or not we can accomplish the task, given the current scenario in this country, and concern with environmental issues, at an allocation of $1 million to operate this office.

And I noticed that, Mr. Wirth, in your statement, you also question, or, actually, you state that you think this should be a minimum amount, and I would tend to agree with that.

I would just ask Mr. Hill to comment on what has been proposed which is a significantly reduced level of funding.

Do you really feel confident that you can handle all the assignments placed upon you with the amount of funding that has been requested by the Administration?

Mr. HILL. It is very difficult. You have to make priorities. We are not able to—the Council is not able to do.

Mr. WELDON. On my other committee assignment, Armed Services, our witnesses cough and spend more money than we are requesting for the entire year here in this budget request. So I would think that those of us on this side of the aisle want to support you, in allowing you to do the job that has been mandated, and whatever those financial resources are, we are prepared to go to battle with the Administration to get those dollars.

Mr. HILL. Well, the Administration will be naming, and sending a new Chairman to visit with you in the not-too-distant future, and I am quite sure he or she will have their points of view at that time.

Mr. WELDON. My other question follows up some comments that you made regarding the impact of halogenated agents that are used in fire protection and suppression. I guess Halon 1301 and Halon 1211 are the two primary agents that are used.

Have we done any analyses in your office on the impact?, because it is a rather minute impact in terms of the overall problem we have with global warming. Has there been a study done of the impact?

Mr. HILL. Not at the Council. The halon compounds were listed, along with the CFC compounds, in the negotiation for the Montreal Protocol. So it is taken as one package. After it reached the international level, I did not find much need when—scientific communities in general. The global scientific community was in general agreement that those were the specific compounds that had to be limited.

Mr. WELDON. Well, I would agree they have to be eliminated for industrial use. I have a problem with the very limited use of those products for fire protection purposes, and I think that perhaps it is being overstated and——

Mr. HILL. Yes. There was considerable concern about the fire suppression activity.

Mr. WELDON. That is right.

Mr. HILL. And as I mentioned, one of the services, now, as they are replacing, or refiling, recycling, no longer vents the old into the atmosphere. It is captured and disposed of in a responsible manner. So we are taking some steps there, and there is a definite place we will not be able to go beyond with regard to use of halons as fire suppressants.

Mr. WELDON. Very good. Thank you, Mr. Chairman.

Mr. STUDDS. The gentlelady from Washington.

Mrs. UNSOELD. Thank you, Mr. Chairman, members of the committee. I am particularly pleased that you have, Mr. Chairman, taken the initiative in attempting to transform NEPA into a charter governing our approach to the global environment.

I have at home a poster that has one of those marvelous pictures of our planet, Earth, taken from space, and it says, simply, underneath: "Consider the alternative." Clearly you have considered the alternative and found it wanting, and are moving forward to prevent that alternative.

I have a couple of questions. Mr. Hill, if I understood you correctly, you believe that NEPA is already broad enough, and you do not want a laundry list of what agency actions might be covered. That there was a danger, then, of omission.

Does that mean there are no agencies, or actions now, that are being omitted from your review?

Mr. HILL. I am quite sure there are many. The system is imperfect, at best. There are some agencies that are more committed to full implementation of the National Environmental Policy Act than others. There are some that are committed to a more aggressive use of the environmental impact assessment process.

Let me give an example. Mr. Yates, one of the attorneys in our General Counsel's office, just returned from a conference in Denver at which the Federal Highway Administration met, for the first time on a regional basis, with their counterparts in the conservation agencies of Government. The Park Service, the Fish and Wildlife Service, and so forth.

Three and a half years ago, I had to sit down with the administrator of the FHWA and say the system is not working well, I think you should look at doing these regional conferences so that people are not meeting as adversaries with regard to a given environmental impact statement being prepared, and it is those types of techniques that are used to try to manage the process, to bring the agencies together, to improve performance, in this case by the FHWA.

Now there is something in the law which I believe should be considered, and is overlooked on occasion. That is section 102(2)(F) which says: "Agencies of the Federal Government shall recognize the worldwide and long-range character of environmental problems, and where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment."

Interestingly, that is in section 102 of the National Environmental Policy Act, not in section 101, and section 101 states what the

national policy is. And this is of much more a generic basis than moving to, as I said, a list of specific impacts.

Mrs. UNSOELD. What, during your term as Chairman, have you done on that 102.F area?

Mr. HILL. Well, we worked very hard with the United Nations Environment Program me to conclude their process of developing principles and goals for environmental impact assessment, and having UNEP adopt those and promote them among the nations of the world.

We went so far, in 1987, when I chaired the delegation to the Governing Council meeting, to propose a global convention, asking participating nations to adopt that process.

We did not get much support for the concept at that Governing Council meeting; however, I must say that other nations in the world have been adopting this process. The European Community has adopted a variant of their own. The Japanese Government has. The Australians. The Soviet Union is now considering this process.

We hosted two Soviet legal scholars last year in our office for three months while they studied this, and other processes in our government.

So this is a growing trend, environmental impact assessment is a growing trend, and one I think that is very healthy because it gives us a good foundation for making those decisions which will pay off in the future.

Mrs. UNSOELD. How many staff do you have, and how many professional scientists, and how, then, are you able to oversee the implementation of NEPA with those?

Mr. HILL. It is very difficult with a limited staff. We have a professional geologist on the staff at the present time. We have attorneys. The three—one member just resigned, who is a professor of environmental engineering at Vanderbilt University.

Mrs. UNSOELD. But that is a member, not staff?

Mr. HILL. That is a member, yes; not staff.

Mrs. UNSOELD. But paid staff, you have only the geologist?

Mr. HILL. Yes. We do borrow other scientific experts from agencies from time to time.

Mrs. UNSOELD. Do you feel that you are capable of adequately monitoring NEPA requirements to your satisfaction with that level of staffing?

Mr. HILL. No.

Mrs. UNSOELD. But you have not requested more.

Mr. HILL. It is extremely difficult. I do the best I can, ma'am.

Mrs. UNSOELD. Thank you, Mr. Chairman.

Mr. STUDDS. The gentleman from New Jersey.

Mr. PALLONE. Thank you, Mr. Chairman. Mr. Wirth made a comment in his statement where he said that the U.S. is the largest national and per capita emitter of greenhouse gases, and we cannot long expect others, especially those in countries far poorer than ours, to take this issue seriously if our own government refuses to take a leadership role.

I think that is a really important statement to make because of what is going on internationally now. I think that if we do not take this leadership role, and say we are going to look at the effect of our actions in terms of global warming, or the greenhouse effect,

and what it means to the rest of the world, it is going to be very difficult to get other countries involved in taking similar environmental actions.

I totally agree with the purposes of this legislation, I think it is needed, and I understand where you are coming from, Mr. Hill, but I am not satisfied that without this type of legislation, we are really going to see the Federal Government playing the role that it should in terms of investigating what affects our actions have overseas, or in terms of the total global environment.

There were some questions that I wanted to ask, in terms of what some of these agencies do now.

For example, the Agency for International Development. What types of actions do they take in terms of loans, or other investments? What do they do now in terms of investigating what effects their actions have on the global environment, or effects overseas? And I would ask the same with regard to some of the other agency actions overseas. The World Bank was mentioned as well.

Mr. HILL. Well, you have asked a very, very broad question. I will try and be as quick as possible.

With regard to the World Bank and the other international financial institutions, there was legislation proposed last year in the Senate to require U.S. executive directors to work toward and assure that there was environmental impact assessment, some sort of process put in place.

It did not survive there. We had a very heated disagreement within the Administration between the Treasury Department, State Department, Environmental Protection Agency, the Council on Environmental Quality, with regard to the need for this.

There is resistance to that, for some reason. My personal estimate is the Treasury Department does not want the U.S. executive directors to be there by themselves. So we are exploring some alternatives, like going to OECD and get other donor countries to come with us, support a similar process, so we go in with a united front.

AID has a separate environmental impact assessment analysis process. As I recall, it was a settlement in litigation brought by NRDC, as a matter of fact. Some of those documents are, I am told, of high quality—I have never read one myself—of high quality. Others are of lesser quality.

There is consideration being given. Interestingly, when we surveyed Federal agencies last year, with regard to implementation of this, one of the military service agencies came back and said, we feel that this is slightly more expensive for us, but it has saved us having problems farther down the road.

So there are those things that people are becoming used to and using this process, and I mean, all out using the process. They recognize they get better decisions. They get a better——

Mr. PALLONE. The problem, though, is that it does not seem there is any kind of coordinated system to do that. There are so many things that we do, as a Nation—whether it is investments through international development projects, or World Bank. Some of the things that were suggested, even in terms of efforts overseas with cocaine, or eradication of marijuana, or cocaine, or heroin products.

I just do not get any impression there is any real effort to be concerned about the effects on the environment of our actions overseas.

Mr. HILL. This is all guided by an Executive Order which I am told was very heatedly debated. When one reads it, it appears to be a series of compromises. It is an imperfect system at best. Statutory support for some change I think would be very good, as I indicated in my testimony.

Mr. PALLONE. Thank you.

Mr. STUDDS. The gentleman from New York.

Mr. HOCHBRUECKNER. Thank you, Mr. Chairman.

Actually I do not have a question. I do have just two quick remarks relative to Mr. Wirth's testimony, and in fact just a comment, really, for all the panelists to hear.

Mr. Wirth, on page 11 of your report, you state: "Consideration of greenhouse gas emissions and climate change impacts can and must be included in the planning process for a wide variety of Federal actions, including the following."

And you talk very prominently about "emissions of greenhouse gases from sources such as automobiles." I have a comment that I would like the panel to be aware of.

There is presently an internal combustion engine that DARPA in fact is funding a study of. It is sort of a three-stage engine, including a standard engine, a Wankel, and some other combination of machinery, which in fact will produce a thermal efficiency much greater than exists in any car today. And I just want you to be aware that this is a program that is being worked on. We need to encourage its development in the private sector as soon as possible. Imagine the impact we could have on the greenhouse effect if in fact we were successful in converting the engines coming out of Detroit to an efficiency that is 50 percent greater than what is available today.

Not only would it give us greater gasoline efficiency but it would reduce the pollutants that we put in the atmosphere.

That is something you should be aware of. I would hope that the Natural Resources Defense Council and Sierra Club would help us promote this engine. And as I say, the Government is excited about it, DARPA is putting money into it, and we are supporting it.

The second point I would like to make is that on the next point that you make, Mr. Wirth, on the top of page 12, you talk about other actions that could affect patterns of energy consumption.

I would hope that you folks would also recognize that there is a lot going on today in terms of electricity conservation.

For example, there are five companies in the country today that will produce ballast tuners for fluorescent lights, that allow the same amount of light emission with 20 percent savings in electricity, and of course in the cost of electricity. So there is a lot that we are trying to do to that is consistent with the testimony that Mr. Wirth has presented here, and I just would hope that the Sierra Club, and others, would embrace these items, and help us promote them into the marketplace as soon as possible.

So if you would like to respond, I would be happy to hear you.

Mr. WIRTH. Yes. Just a very brief comment. We are aware of those developments and consider them very encouraging. In fact

we know of automobiles that can get up to 98 miles a gallon. There are such prototypes.

The point of the statement in my testimony is that—the availability of those technologies need to be integrated into Federal decision-making, which is not now being done.

There was a decision—as I say earlier on in my testimony—by the National Highway Traffic Safety Administration to in fact roll back the vehicle fuel efficiency of 1989 model year automobiles. Those sorts of decisions, which are being taken without any regard for impacts on the global climate, are actually undercutting the sorts of points that you were making, and that we agree with.

I think that we need to be clear what we are talking about here, which is an analysis, and collection of information, and coordination of information.

We are not talking about crafting substantive policies. Collecting that sort of information and making it available, analyzing it, is a modest but necessary first step towards coming up with more substantive policies on the greenhouse effect.

Mr. HOCHBRUECKNER. Well, clearly, the best way to prevent the Federal Government from rolling back the miles-per-gallon numbers is to promote alternative routes which will allow us to meet those goals, and exceed them.

So, we need a combination of not making the law less stringent and promoting those technologies that will do the job. So thank you very much. Thank you, Mr. Chairman.

Mr. STUDDS. Thank you. Mrs. Wilson, let's shift the focus slightly. I want to ask you specifically about the comments you make in your prepared testimony about our proposal to apply NEPA to the extraterritorial actions of Federal agencies.

Basically you say that you have no position on this subject because the new Administration has no position.

That is understandable, but it is not particularly helpful. Are you trying to develop a position, and, if so, when do you think you might have one?

Mrs. WILSON. That would be under the initiative of the Council on Environmental Quality as far as trying to develop a position, but I would say that we have certainly been in consultation with the CEQ on ways we can promote improved environmental assessment in the international arena.

And yes, there are discussions ongoing within the Administration on how best to achieve that improvement including proposals such as you have made. I think that with respect to the applicability of NEPA, part of the question is whether the cause-of-action type of result that we have domestically is useful, or if that indeed is applicable in a foreign circumstance; I think some of these procedural questions have to be worked through.

It is not a matter of not wanting the goal achieved that you want to achieve. We want to achieve the same goal; it is a matter of how to do it.

Mr. STUDDS. Let me try that in more general terms.

Mrs. WILSON. Yes, sir.

Mr. STUDDS. If NEPA works domestically, as you say it does, why shouldn't we apply it—although clearly with some exceptions—to

the actions of domestic agencies occurring overseas? Surely we care about the environmental impacts of what we do in either case.

Surely we are responsible for what we do in either case. Surely the American public has a right to review and comment in either case. And surely we should be considering environmentally preferable alternatives to proposed actions in either case.

Can you identify any NEPA principles, that for reasons of law, or practicality, or common sense, could not or should not be applied to extraterritorial actions?

Mrs. WILSON. If I might, Mr. Chairman, I would like to provide a more extended response for the record, but I would briefly like to mention that as far as some of the legal principles are concerned—well, let me start off on the positive.

On the positive side, there are the basic principles of NEPA—which are, that environmental alternatives ought to be examined, impacts need to be assessed, and measures taken to avoid, minimize, and mitigate environmental impacts—all of those, we absolutely agree, must be done internationally as well as in the United States.

Cumulatively, these principles are among the strengths of the U.S. NEPA law. But with respect to some of the legal and procedural entanglements that we think could happen internationally, I would like to provide you an extended response for the record.

We think there are some procedural aspects which could be difficult in some instances.

It is not a matter of wishing to award American public disclosure. Certain donor countries may and wish to have their publics involved, and that is where you get into a foreign relations dilemma.

Mr. STUDDS. We would like to see that response.

Mrs. WILSON. Be glad to. Yes, sir.

[The information of Mrs. Wilson can be found at the end of the hearing.]

Mr. STUDDS. Mr. Wirth, would you like to comment on that?

Mr. WIRTH. Yes, Mr. Chairman. Mr. Hill, earlier on, alluded to an Executive Order that was promulgated in 1979. We have been following this issue for a long time, and in fact CEQ sort of lost that battle. They were in favor of a more expansive interpretation of NEPA abroad.

We have now been living with that Executive Order for 10 years. It was promulgated in January of 1979. There was a great deal of uncertainty, and, indeed apprehension, when that Executive Order was promulgated, because of fears that NEPA would be attenuated when it came to impacts on the global commons, and, in particular, impacts on the environments of foreign countries.

I think we can now say that the Executive Order was a mistake and that it should be reversed by legislation, and, indeed, Mr. Chairman, that is the thrust of my testimony, and the reason that I brought in the example of the Central American medfly eradication.

The Executive Order, as I said, has not spawned a systematic sound analysis, but instead has produced abuses. It appears that only legislation will reverse that situation.

Mr. STUDDS. Mr. Hill, do you believe that a decision to produce oil within the Arctic National Wildlife Refuge would have a potential impact on global warming, especially when compared to alternatives for producing or conserving energy?

Mr. HILL. No more so than any other oil development, oil production project.

Mr. STUDDS. Do you know if the EIS for ANWR includes consideration of global environmental issues?

Mr. HILL. The EIS does not. Both the Departments of Interior and Energy have said, very clearly, that we are going to have a continuing need for oil regardless of whether we emphasize conservation or nuclear power, or whatever else, or all of those in combination.

Mr. STUDDS. Should it not——

Mr. HILL. But out in time, it will have—we will have that need.

Mr. STUDDS. Should it not include that? We realize that it does not.

Mr. HILL. I have not read it. One would assume that it would have that consideration, and future ones will when they have—when the guidance from the Council on Environmental Quality is issued.

Mr. STUDDS. What kind of environmental analyses are currently performed for U.S.-assisted projects aimed at the eradication of marijuana and coca crops in foreign countries?

Mr. HILL. Oh, there have been some—the State Department has done what they call concise environmental reviews.

Mr. STUDDS. CERs.

Mr. HILL. What they call it, I am not sure. There was a much more lengthy and complete document prepared for the utilization of paraquat headed more—the impacts on human health for Americans.

Mr. STUDDS. Mr. Wirth, you look like you could stand responding to that as well.

Mr. WIRTH. Thank you, Mr. Chairman. I can speak to this issue with some authority because I used to hold the position in the State Department's Office of the Legal Advisor that is responsible for NEPA implementation.

In fact the State Department does prepare these concise environmental reviews for these eradication projects. They tend to be very short, on the order of about five pages, I should clarify that this information is dated by at least 3 years. But at least when I was there, that was the situation.

They are prepared under the Executive Order. They tend to be about five pages long. They are prepared by consultants churned out in a sort of formulaic fashion, and, to my knowledge, they do not involve any visits to the country in question.

In particular, there is no consultation with the public that might be affected by these eradication projects. In fact the effects of these eradication projects on the public in those countries can be quite large.

Pesticide drift can result in impacts on farmers who are dealing with legitimate agricultural crops right next door to marijuana or coca fields.

So I think that this is another example of the inadequacy of the analysis that is being done for Federal actions that have impacts abroad, and in particular under the 1979 Executive Order.

Mr. STUDDS. I will try another one to Mr. Hill with an assist maybe from Mr. Wirth. What kind of environmental review accompanies the export of pesticides?

Mr. HILL. None that I know of at this time.

Mr. STUDDS. What about Army Corps of Engineer projects overseas?

Mr. HILL. The Corps does, under a general directive issued by the Department of Defense and the Joint Chiefs of Staff, have an environmental impact assessment process.

Mr. STUDDS. Military construction projects abroad in general do?

Mr. HILL. Yes.

Mr. STUDDS. Mr. Wirth, aside from those you mentioned in your testimony, are there any categories of Federal agency actions, the international environmental effects of which are not being adequately considered today, and if so, which?

Mr. WIRTH. I cannot think of any offhand, Mr. Chairman, but if I do, within the next day or so, I would request the opportunity to supplement the record with a written statement.

Mr. STUDDS. Absolutely.

[The information of Mr. Wirth can be found at the end of the hearing.]

Mr. STUDDS. I am going to pause again, and give other members a chance in the second round. The gentleman from Pennsylvania.

Mr. WELDON. Thank you, Mr. Chairman. I have no questions at this time.

Mr. STUDDS. The gentleman from New Jersey. The gentleman from California. The gentlelady from Washington.

Mrs. UNSOELD. Thank you, Mr. Chairman. I am going to try this again.

Mr. Hill, is it CEQ's position that H.R. 1113 is not needed because your regulations are already binding on all Federal agencies, including independent regulatory commissions such as FERC?

Mr. HILL. Not by any means. I did, in my opening statement, indicate that I believe there are portions of the bill which should be adopted, especially—especially that provision.

Mrs. UNSOELD. How, even if it were adopted is a geologist going to determine, for example, that FERC is adequately mitigating for our fisheries resource in their actions?

Mr. HILL. The Council does not review every environmental impact statement, either draft or final. The Environmental Protection Agency has a staff which does through headquarters, through their regional offices.

Other Federal agencies participate in the preparation of these documents, and we have the other solid guarantee, which is in the law, which is mandated, which is public participation. It is a very healthful and helpful part of this process. An agency must go to open public meetings for scoping the document they are going to prepare.

They must prepare a draft document and make it available to the general public for a minimum of 45 days. They must respond to the major questions raised by all commenting agencies, individuals,

organizations, et cetera, in the final environmental impact statement.

Then it must be filed and put on hold for 30 days before a final decision, or record of decision, as we call it, is issued.

So whether the Council on Environmental Quality has one geologist, or one from 10 different disciplines, really will not bear on the broad range of environmental impact statements. Given, there are many, many agencies and individuals who comment and participate in that process.

Mrs. UNSOELD. I am not talking about the case by case situation. Rather, does FERC's approach to its issuing permits adequately take into consideration the NEPA requirements in general, for example, as they should apply towards the mitigation of the damage to our fisheries as a result of dams?

Mr. HILL. Well, you raise an interesting example with FERC, because FERC is one of those that has said we are an independent agency, we will voluntarily comply with the National Environmental Policy Act, we will not do this, we will not bind ourselves for the future, et cetera, et cetera.

And that would be one of the healthful changes in the National Environmental Policy Act, to clarify that point, that FERC is subjected.

Mrs. UNSOELD. Do you think they have adequately voluntarily complied?

Mr. HILL. As far as their—now they had to submit regulations to the Council, how they—their implementing regulations had to be submitted to the Council, and the General Counsel's office at CEQ reviewed those, and suggested amendments.

They accepted all recommendations from the General Counsel's office for change of their procedural regulations, and then they bound themselves to that, but as I said, it was voluntary. It was not done under mandate of statute.

Mrs. UNSOELD. Thank you.

Mr. STUDDS. The gentleman from New Jersey.

Mr. PALLONE. Thank you, Mr. Chairman.

In a series of recommendations it prepared during the transition period, the National Academy of Sciences argued that the likelihood of rising sea levels should be taken explicitly into account in the planning of coastal development, construction of power facilities, location of waste disposal dumps, and other coastal-related activities.

I wanted to know if you agree with that recommendation, and if so, how could it best be implemented? Perhaps through amendments to the Coastal Zone Management Act, and, if so, what kind of amendments?

Mr. HILL. Well, that is why we put it in the draft guidance that the Council has prepared, that has been a part of this discussion, and I hope that as we go through interagency review, comment, and so forth, that we can perfect the document.

I have not given any thought to amending the Coastal Zone Management Act.

Mr. PALLONE. Well, the reason I ask is because I think part of the general discussion today is we, in the past, in my opinion, have not been looking at things in a broad enough scope, and with all

the development that is taking place at the coast, my concern is that we should be looking at it in a broader way.

Mr. HILL. Yes, sir.

Mr. PALLONE. But you have not looked specifically at the Act?

Mr. HILL. I have not looked specifically at the Act. We have moved—and I do not think our draft guidance says it explicitly—but we have moved from an area of some scientific thought to an area, now, where reasonable—does a reasonable individual take the potential, these potential impacts into account when they are facing a decision?

And we have crossed that line of reasonability, and we are saying now, yes, we have, and we should act responsibly in these things. So it would require Federal—what we are suggesting is for Federal agencies to think through the potential impacts of change on the agency's programs but also, the potential impact of the agency's programs on the change.

Mr. PALLONE. Let me ask this with regard to wildlife.

One of the important questions to be answered in any EIS is what the effect of the action will be on the health and diversity of wildlife. To develop the answer to that question, are there any changes in the statute, or the CEQ regulations, that you think should be considered, Mr. Hill?

Just generally, in terms of what impact actions have on wildlife. There is an example here. If we define significant population or ecosystems, should we require that the EIS process reveal whether the viability of any significant population or ecosystem is likely to be jeopardized?

Mr. HILL. The process already does that through the involvement of the Fish and Wildlife Service with the lead agency, that is, the agency that is preparing the environmental impact statement. They will always consult the Fish and Wildlife Service.

Mr. PALLONE. You think that the current process, then, is sufficient in that regard?

Mr. HILL. That has been my experience, yes.

Mr. PALLONE. I do not know if anybody else wanted to comment on it. I gather it is not necessary. All right, thank you.

Mr. STUDDS. The gentleman from New York.

Mr. HOCHBRUECKNER. I have no questions, Mr. Chairman.

Mr. STUDDS. Well, in that case, let me come back, again, if I may, to something we touched on before, but I want to pursue it in a little more detail, and this could be to any and all.

A noted environmentalist, the Senator from Idaho, Mr. Symms, has called for the application of NEPA, or a NEPA-like process, to U.S. votes on development projects carried out by the World Bank and other international lending institutions.

What is your reaction to that proposal, and in the unlikely event that you were to oppose it, what steps should be taken to ensure the full consideration of environmental impacts before votes on these projects occur? Anybody?

Mr. HILL. I think all of the entities represented at this table, including the individuals representing those organizations, all supported the legislation last year.

Mr. STUDDS. Were all in favor of it? No dissent?

Mrs. WILSON. The Environmental Protection Agency had some suggestions on putting together a pilot program for 2 years, where the United States would do a demonstration or a pilot effort with the Multilateral Development Banks, so that after 2 years we would hopefully have encouraged the MDBs to include environmental assessment responsibilities in their own structures.

Then the MDBs would not always be dependent on the United States having to do the environmental assessments; we would make this an infrastructure gain to the MDBs. We recommended seconding or detailing United States' employees to assist with training, education, technical assistance, and also seconding other countries' employees to do the same type of thing.

Mr. STUDDS. Do you have that in writing?

Mrs. WILSON. Yes, sir. I would be glad to provide you with last year's testimony.

Mr. STUDDS. We would like that. That would be very helpful to us.

Mrs. WILSON. Certainly.

Mr. STUDDS. We would like to see that.

Mrs. WILSON. I would be delighted.

[The information of Mrs. Wilson can be found at the end of the hearing.]

Mr. STUDDS. Mr. Wirth?

Mr. WIRTH. Thank you, Mr. Chairman.

Before I answer your question, let me give a bit of background around this issue. As I said in my opening statement, the Multilateral Banks do not now do any form of what we would call environmental impact assessment, although I think that there are a lot of individual staffers within those institutions that think it would be a good idea.

There is already legislation that directs the Department of the Treasury, which is the agency of the U.S. Government that instructs the U.S. representatives to these institutions, to seek to have the World Bank and the three regionals to incorporate an environmental impact assessment process into their procedures.

Treasury has not been very enthusiastic about pushing this issue with the institutions, and, needless to say, the institutions have not responded to a communication that they have received in rather lukewarm fashion.

I think that the frustration with that instruction that already exists in the legislation is the genesis for the additional legislative proposal that you were talking about.

I think the most desirable goal, f course, is to get the World Bank and the borrowing country to do an environmental impact assessment. Certainly an assessment being done by the United States, on a vote in the institution as opposed to on the project that is actually being done, is a second-best alternative.

However, it is important to keep the pressure on these institutions whose bureaucracies move very, very slowly, and I think that that is the genesis for the legislative proposal that you are talking about.

Mr. STUDDS. I appreciate that.

Mr. Hill, you mention in your testimony the request you have received from EPA to review a proposal by the Department of the In-

terior for new long-term water contracts in various irrigation districts in the Central Valley of California.

EPA's position, as I understand it, is that the Interior Department has a responsibility to conduct an EIS before a decision is made about renewing those contracts, and that it is authorized under section 309 of the Clean Air Act to refer disputes of this sort to CEQ.

The Interior Department, on the other hand, as I understand it, does not want to do an EIS, does not want to listen to EPA, and does not think CEQ has a right to butt its nose into this at all.

Now, there is obviously a very important issue here somewhere. When will CEQ make a decision with respect to the referral question, and does the Interior Department have the authority to proceed, regardless of what you do?

Mr. HILL. Well, the Interior Department can always do what it pleases. The Interior Department is——

Mr. STUDDS. I do not believe that is how its statute reads, but, go ahead.

Mr. HILL. You would be amazed, Mr. Chairman.

Mr. STUDDS. We have been.

Mr. HILL. The department is proceeding under a ruling from the Solicitor, that says—and I am not an attorney but I will give you a layman's characterization. As I have mentioned in the testimony, we went out and asked for public comment on should the Council take jurisdiction?, does the Council have jurisdiction?, et cetera.

We got about 30 letters back. It is an inch and a half thick. I got part way through on Saturday before turning to the material for this hearing, and will get back to reading that tomorrow.

Mr. STUDDS. Sorry about that.

Mr. HILL. That is all right. This is a very important hearing. I feel it is very, very important.

The Department of Interior has said that because of the initial Reclamation Act of 1939, and the amendments of 1956, that the Secretary has no alternative but to renew the contracts.

The Solicitor then falls back on the NEPA procedures adopted by the Bureau of Reclamation, which say that that type of action, in which there is no change in conditions, terms, et cetera, is categorically excluded from the environmental impact assessment process, because it is more a ministerial act than a policy determination.

The general counsel says I am doing okay, so——

Mr. STUDDS. Approval is noted.

Mr. HILL. Therein lies the difficulty. We are trying to seek terms, conditions, et cetera. There are other questions involved. There is litigation been filed by NRDC and 15 or 16 other organizations in California. Needless to say we are being careful, because in California, water is an extremely contentious subject.

There have been some environmental impacts, adverse or unacceptable—environmental impacts from the operation of this project, which is basically a large reservoir, and a distribution system to 23 or 24 irrigation districts for farming.

And these are not the large corporate farms we think of. These are small 60-acre family-type farms. Three communities draw their domestic water from this. So there are a lot of issues involved here that are difficult. We are trying to sort through. In answer, I tend

97-423 O - 89 - 2

to fall more on the side of EPA's having the broadest possible interpretation of its ability to refer these questions to CEQ under section 309 of the Clean Air Act, because EPA has a full staff out in the regional offices that are able to visit sites, that are able to raise these questions early on, that know who the players are and can work with them.

Nonetheless, we have to make a decision on the question of, was this more than just a ministerial act? If so, will we then open the set of questions—what should be done? If we do do that, we will again go back to the general public, and the interested public, more specifically, and ask for their comments on a series of questions which we would have to develop.

I would expect in the next two to three weeks we will have a decision on the first question—whether to take jurisdiction. In the meantime, the litigation is going forward in California, NRDC v. The Bureau, or, v. Houston, who was the director, an in addition to that, the Secretary of Interior, and the administrator of EPA are attempting to negotiate their own solution, which would be a very happy issue. If we can come out with environmental documentation, and get on with other actions that would flow from that, then the Council would not have to take it up, because these referrals are very resource-intensive.

Mr. STUDDS. Let me ask you again. I appreciate what you are saying. In your judgment, leaving the litigation aside for the moment, would the Interior Department have the authority to ignore, altogether, whatever you decided?

Mr. HILL. Yes. The Council's opinion, according to the law, is merely advisory. Now we have had the good fortune and good support of the Congress to back up the Council over the history of the 23 referrals that have come before the Council in the last 19 years.

I cannot think of a circumstance where an agency refused and was not then advised, especially through the appropriation process, that they had better with the program. So that kind of backing is greatly appreciated.

Mr. STUDDS. I understand that, but under the circumstances, would either you, or anyone else on the panel like to see an additional legislative tooth, or two, given to the CEQ?

Mr. HILL. I have not thought about that.

Mr. STUDDS. Wouldn't it be simpler, easier and quicker if your decisions were binding?

Mr. HILL. It would sure make the chair warmer.

Mr. STUDDS. Mr. Wirth?

Mr. WIRTH. Mr. Chairman, my initial impression is that——

Mr. STUDDS. It is his chair, so you are free to warm it.

Mr. WIRTH. I do not know that I would want to. It sounds more like a hot seat in this case. That is a proposal that my first impression is makes sense.

I am not personally a lawyer on this case, and I would appreciate an opportunity for NRDC, as an organization, to submit a written statement on this point for the record if we feel it is appropriate in this case.

Mr. STUDDS. I appreciate that.

[The information of Mr. Wirth was not submitted.]

Mr. STUDDS. Did you want to respond to that, Mrs. Wilson? It is not necessary.

Mrs. WILSON. I would be glad to make sure that you have all the relevant documents that we submitted to CEQ on this, if that would be helpful.

Mr. STUDDS. OK.

[The information of Mrs. Wilson can be found at the end of the hearing.]

Mr. STUDDS. A couple more, if I may. I think this is probably more to Mr. Hill. One of CEQ's most important roles, clearly, is to help resolve disputes between Federal agencies. We have been talking about that a lot.

Two years ago, the Environmental Law Institute raised the possibility of extending to Governors the power to refer environmental disputes to CEQ in cases where there was a conflict between the State Government and the Federal Government over an environmental issue.

What do you think of that proposal?

Mr. HILL. One of my colleagues and I voted on that, and came down in the negative, and there are a couple of practical reasons for coming down in the negative.

One is, and principally, the process involves Federal agencies, and there is no way to reach State Governments under NEPA. So you have, in essence, a different class of citizen you would be inviting to participate in this.

Second, and of importance as well, there has been no interest—we have not had any massive correspondence, or groundswell of opinion saying we should do this.

And finally—and this gets back to the resource question—involving States would then—we would have to commit more resources to those referrals. They are rare, but as I said, they are resource-intensive when we get involved in one.

Mr. STUDDS. Let me ask you a specific one, and then I will give each of you a chance to have a general summation, if you wish.

Mr. Hill, in your statement you say, and I quote, that "CEQ/OEQ frequently responds to requests from Federal, State and Local agencies, and private citizens to examine Federal agencies and NEPA compliance for specific proposed actions."

In that light, here is one. Would you agree to respond on a priority basis to a request from me to determine whether an environmental assessment should be conducted prior to the resumption of full operations of the Pilgrim Nuclear Power Plant in Plymouth, Massachusetts?

The NRC says that an environmental assessment is not required, but their regulations seem to us to state plainly that one is.

Are you willing to take a look at that?

Mr. HILL. Yes. I think your staff had already delivered that question, just as I sat down.

Mr. STUDDS. I am very happy to hear that. We would very much appreciate that.

Mr. HILL. Yes.

Mr. STUDDS. Consider that such a request, and I would appreciate that.

[The information of Mr. Hill can be found at the end of the hearing.]

Mr. STUDDS. Before we close the hearing, do any members—I see the gentleman from New York, Mr. Solarz, noted the phrase "global" in the announcement of the hearing.

[Laughter.]

Mr. STUDDS. Does the gentleman have any questions?

Mr. SOLARZ. No questions, Mr. Chairman.

Mr. STUDDS. Are there any other questions of members who are here?

[No response.]

Mr. STUDDS. If not, before we close, let me just say that I agree with you, Mr. Hill. I think this hearing has been of more than routine consequence, and I also think that each of the three of you has made a very major contribution. In closing—it is not at all mandatory—but if any of you would like to make a concluding concise, pithy summary observation, you are welcome to do so.

Mr. HILL. Thank you for the opportunity, Mr. Chairman.

Mrs. WILSON. I would simply add I am very delighted the committee is going ahead with reauthorization of CEQ and NEPA. I think it is something that we need, and we need rapidly, and I am pleased with the committee's progress so far on this. Thank you for letting me testify.

Mr. STUDDS. Thank you. Mr. Wirth.

Mr. WIRTH. I thank you as well, and we are very pleased that the committee is taking a serious look at global impacts and impacts on the environments of foreign nations.

Mr. STUDDS. We thank you all, and the subcommittee stands adjourned.

[Whereupon, at 11:52 a.m., the subcommittee was adjourned, subject to the call of the Chair.]

[The following was submitted for the record.]

101ST CONGRESS
1ST SESSION

H. R. 1113

To authorize appropriations for the Office of Environmental Quality for fiscal years 1989, 1990, 1991, 1992, and 1993; to ensure consideration of the impact of major Federal actions on the global environment, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1989

Mr. STUDDS (for himself, Mr. DAVIS, Mr. YOUNG of Alaska, and Mr. WELDON) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

---

A BILL

To authorize appropriations for the Office of Environmental Quality for fiscal years 1989, 1990, 1991, 1992, and 1993; to ensure consideration of the impact of major Federal actions on the global environment, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CLARIFYING AMENDMENTS.

(a) Section 102(2)(C) of the National Environmental Policy Act, as amended (42 U.S.C. 4341 et seq.), is amended—

(1) in the first paragraph, by inserting ", including extra-territorial actions," after "actions";

(2) by striking clause (iii), and inserting in lieu thereof:

"(iii) alternatives to the proposed action that achieve the same or similar public purposes, and that avoid, minimize or compensate for the adverse impacts described in clause (ii),"; and

(3) by inserting "and the public" immediately before the second period.

(b) Section 104 of the National Environmental Policy Act, as amended, is amended by inserting "(a)" before the first sentence and by adding at the end thereof the following new subsection:

"(b) No Federal action shall be exempt from the requirements of this Act unless explicitly exempted by law.".

SEC. 2. THE PRESIDENT'S STRATEGY FOR ENVIRONMENTAL PROGRESS.

Section 201 of the National Environmental Policy Act is amended to read as follows:

"No later than January 31 of each year, the President shall transmit to the Congress a report which shall set forth the President's strategy for achieving progress toward the goals described in title I of this Act during that year. The statement shall describe areas of new or heightened environ-

mental concern, propose new initiatives to strengthen and improve Federal programs, and set priorities for national action. The report shall also analyze issues associated with the implementation of this Act and the effectiveness of measures taken to mitigate the adverse environmental impacts of Federal actions.

SEC. 3. REGULATORY AUTHORITY.

Section 204 of the National Environmental Policy Act, as amended, is amended by—

(1) striking the "and" at the end of paragraph (7);

(2) striking the period at the end of paragraph (8) and inserting in lieu thereof "; and"; and by

(3) adding the following new subsection:

"(9) to promulgate regulations governing the implementation of the National Environmental Policy Act by all Federal agencies, including independent Federal regulatory commissions. The regulations shall include provisions for public review and comment on the detailed statements required by section 102(2)(C) and, as appropriate, on other documents prepared pursuant to this Act.".

SEC. 4. REVIEW FUNCTIONS OF COUNCIL.

(a) Not later than six months after the date of enactment of this Act, the Council on Environmental Quality, hereinafter referred to as "the Council", shall issue guidelines for

Federal agencies to review the effectiveness of a statistically significant sample of the detailed statements prepared by the agency under section 102(2)(C) of the National Environmental Policy Act in which measures were specified for the mitigation of any adverse impact on the environment that was predicted to occur as a result of the agency action.

(b) The guidelines established by the Council under subsection (a) shall require that Federal agencies review—

(1) the extent to which mitigation measures specified in the statement were implemented in connection with the action;

(2) the accuracy of the predicted adverse impact which the implemented action would have on the environment, including fish and wildlife populations and habitat; and

(3) the effectiveness of the implemented mitigation measures.

(c) Each Federal agency shall comply with the guidelines issued by the Council under this section, and shall promptly submit to the Council the results of the reviews it has undertaken.

The Council shall include a summary of the results of the reviews carried out by Federal agencies under this section in the annual report transmitted to Congress under section 201 of the National Environmental Policy Act.

SEC. 5. REGULATIONS AND EXEMPTIONS.

(a) Not later than one year after the date of enactment of this Act, the Council shall issue regulations requiring Federal agencies to modify their procedures for complying with section 102(C)(2) of the National Environmental Policy Act in order to ensure the full consideration of the environmental impacts of their actions on the oceans, the atmosphere, and other geographic areas outside the jurisdiction of the United States, its territories, and possessions. The regulations shall include guidance for assessing the impacts, including the cumulative impacts, of proposed Federal actions on global climate change, depletion of the ozone layer, sea level rise, and other phenomena of international environmental concern.

(b) The requirements of section 102(C)(2) of the National Environmental Policy Act shall not apply to the following extra-territorial Federal actions:

(1) actions taken to protect the national security of the United States, or in the course of an armed conflict;

(2) intelligence activities and arms transfers;

(3) votes and other actions in international conferences and organizations; and

(4) emergency disaster and relief actions.

SEC. 6. AUTHORIZATION OF FUNDS.

Section 205 of the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4374), is further amended by adding the following new subsection:

"(e) $1,000,000 for each of the fiscal years ending on September 30, 1989, 1990, 1991, 1992, and 1993.".

O

STATEMENT OF A. ALAN HILL

CHAIRMAN, COUNCIL ON ENVIRONMENTAL QUALITY

AND

DIRECTOR, OFFICE OF ENVIRONMENTAL QUALITY

BEFORE THE

SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT

HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

MARCH 7, 1989

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify before you regarding the proposed reauthorization of the Office of Environmental Quality (OEQ). As you know, OEQ was established by the Environmental Quality Improvement Act of 1970 (EQIA). That statute directed OEQ to, among other things, provide the professional and administrative staff for the Council on Environmental Quality (CEQ) which had been created a few months earlier by the National Environmental Policy Act (NEPA).

In addition, the EQIA requires that OEQ assist federal agencies in appraising the effectiveness of existing federal facilities and programs which affect environmental quality, promote the advancement of scientific knowledge of the effects of actions and technology on the environment, and collect and interpret data and information on environmental quality. The EQIA also provides that the Chairman of the Council serves as Director of OEQ.

Although CEQ was given a permanent authorization in NEPA, periodic reauthorization is required for OEQ. Such reauthorization, and certain amendments to NEPA, are the subject of the proposed legislation now before you.

In this testimony, I will briefly describe some of the ongoing activities of the Council on Environmental Quality and the Office of Environmental Quality. I will then offer comments on H.R. 1113.

Activities of CEQ and OEQ

The Council on Environmental Quality was created in 1970 to assist the President in the preparation of an annual Environmental Quality report, to gather timely information on trends in the environment, and to review the programs and activities of other federal agencies for compliance with the goals and directives of NEPA. OEQ was created shortly thereafter to "provide the professional and administrative staff for the Council." Environmental Quality Improvement Act of 1970, § 202(c)(2); 42 USC § 4371(c)(2).

CEQ/OEQ has divided its responsibilities into three categories for purposes of budget planning: environmental policy analysis and development, interagency coordination of environmental quality programs, and environmental data acquisition and assessment. In addition, in furtherance of these responsibilities, OEQ has been authorized to establish a Management Fund to accept advance payments from other federal

agencies to finance studies that are jointly sponsored by OEQ and other federal agencies or interagency environmental projects. I will review our activities in these areas.

Environmental Policy Analysis and Development

The environmental policy analysis and development program is carried out primarily by the Chairman and two Council Members. These activities include providing expert opinion and policy advice to the President on environmental matters, preparing the annual Environmental Quality report, and participation in international environmental activities.

Presidential Advice

I participate in the work of the Domestic Policy Council when environmental matters are discussed. For example, I have been involved in discussions regarding stratospheric ozone depletion, the Montreal Protocol, and export of hazardous wastes. In addition, the two CEQ Members have served on Domestic Policy Council Working Groups. Member Schafer also chaired the Domestic Policy Council's Task Force on Outdoor Recreation Resources and Opportunities.

Annual Environmental Quality Report

Another statutory Council function is the preparation of annual Environmental Quality reports. These reports contain information on conditions and trends in the quality of the nation's environment, and on environmental activities of federal, state, and local government agencies, as well as private

entities. The reports also contain CEQ's findings which have been developed through its own studies, work with other federal agencies, and activities authorized by NEPA and other directives.

CEQ's most recent report, the 17th Environmental Quality Report for the year 1986 was released on October 3, 1988. The Council will publish the 18th and 19th reports for the years 1987 and 1988 as one document, which should be available shortly.

International Environmental Issues

A third aspect of the Council's environmental policy analysis and development program is our involvement in international environmental issues. The Council acts in concert with White House advisors and the Department of State, the Environmental Protection Agency (EPA), and other agencies to develop international environmental policy. For example, we were actively involved in the preparation of the United States response to the report of the World Commission on Environment and Development, an independent body composed of prominent individuals in the environmental field from around the world. We are also involved with the United Nations Environment Programme (UNEP) on issues relating to global warming, species preservation, regional seas, and environmental impact assessment. CEQ will participate in the 1989 meeting of the UNEP Governing Council.

CEQ has worked with other agencies in discussions of the

ratification and implementation of the Montreal Protocol on Substances that Deplete the Ozone Layer, and on the Intergovernmental Panel on Climate Change. The Council also participates in an interagency working group dealing with the export of hazardous wastes.

Further, CEQ is involved with two bi-lateral agreements, one with the Soviet Union and one with Japan. Last year, CEQ hosted a project meeting in the United States and led a delegation to the Soviet Union for a project meeting there under the "Agreement on Cooperation in the Field of Environmental Protection" between the United States and the Soviet Union. This is a particularly significant period in the development of Soviet environmental law inasmuch as the Soviet government is in the process of establishing a new environment agency which will encompass international environmental responsibilities, and is drafting a new environmental law.

The CEQ General Counsel also co-chairs a project on environmental assessment under the "Agreement between the Government of the United States and the Government of Japan on Cooperation in the Field of Environmental Protection." CEQ continues to exchange information with officials of the Environment Agency of Japan under the terms of the agreement.

Interagency Coordination of Environmental Quality Programs

The second CEQ/OEQ program activity, interagency coordination of environmental quality programs, involves the promulgation and interpretation of regulations implementing the procedural provisions of NEPA, assistance in coordinating federal environmental programs that involve more than one agency, and resolution of interagency disputes through the NEPA referral process.

CEQ NEPA Regulations

As you well know, Section 102 of NEPA requires that all federal agencies assess the environmental impacts of proposed major federal actions significantly affecting the quality of the human environment. Shortly after NEPA was enacted, the Council issued guidelines to assist federal agencies in complying with this requirement. Through several years of experience, the process evolved into one in which agencies prepared "environmental impact statements" (EIS) for major federal actions significantly affecting the quality of the human environment, and more concise "environmental assessments" (EA) for actions for which the potential environmental impact was unclear.

The lack of a legally binding, uniform body of regulations, however, combined with increasing litigation, led to the production of massive EISs with scant readership and to many criticisms of the NEPA process. To address these concerns, the Council was directed by Executive Order No. 11991 (1977) to develop a set of binding regulations to implement NEPA which

would reduce paperwork and delay and improve the decisionmaking process.

Those regulations were promulgated in 1978 and became effective and binding on all federal agencies in 1979. The only amendment to the regulations, one dealing with incomplete and unavailable information, was promulgated in 1986. Courts, including the United States Supreme Court, have been quite supportive of the CEQ regulations.

In addition to promulgating its own regulations, CEQ/OEQ is also called upon to review other agencies' NEPA procedures and to advise them with respect to their responsibilities under NEPA and the CEQ regulations. CEQ/OEQ frequently responds to requests from federal, state, and local agencies, and private citizens to examine federal agencies' NEPA compliance for specific proposed actions.

For example, last year CEQ/OEQ reviewed and approved revisions to NEPA procedures for the Farmers Home Administration, the Department of Housing and Urban Development, and the Department of the Army. In addition to these formal consultations, the CEQ/OEQ staff worked with the Department of the Navy, the Department of the Air Force, the Forest Service, the Federal Aviation Administration, the Federal Communications Commission, and the Nuclear Regulatory Commission to develop revisions to those agencies' NEPA regulations. We are continuing to work with the Federal Aviation Administration in particular regarding NEPA compliance issues.

Further, the staff has consulted with several federal agencies and environmental organizations regarding the National Science Foundation's (NSF) activities in Antarctica. CEQ/OEQ staff also met with NSF officials to discuss compliance with NEPA and Executive Order No. 12114 (1979) (Environmental Effects Abroad of Major Federal Actions) for their activities in that region, and reviewed NSF's new "Environmental Agenda" and NEPA documentation for construction of a facility at McMurdo Station there.

As a final example, CEQ/OEQ is also working with federal agencies regarding the assessment of cumulative impacts. The CEQ regulations define "cumulative impact" as the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. See 40 CFR § 1508.7. We have initiated a review of cumulative impact assessment as a component of EISs, and have prepared an inventory of cumulative assessment-related activities conducted by federal agencies. One of our activities in this area is focusing on how to improve the scoping of cumulative impact assessments.

Coordinating Interagency Environmental Programs

One of our efforts in coordinating federal environmental programs is its participation on the Interagency Task Force on Acid Precipitation (ITFAP) which directs the National Acid Precipitation Assessment Program (NAPAP). NAPAP's Office of the

Director of Research is housed in CEQ's offices, and one Member of the Council has been designated as Executive Secretary for ITFAP. The Task Force carries out NAPAP with funds appropriated to individual federal agencies in accordance with a mutually agreed upon research plan. CEQ/OEQ provides administrative and financial management assistance to NAPAP.

Referral Process

Another facet of CEQ/OEQ's interagency coordination function is the resolution of interagency disputes through the referral process. Section 309 of the Clean Air Act directs the EPA Administrator to

> "review and comment in writing on the environmental impact of...newly authorized Federal projects for construction and any major Federal agency action...to which [NEPA Section 102(2)(C)] applies, and...proposed regulations published by any department or agency of the Federal Government."

That section also requires that if, after such a review,

> "the Administrator determines that any such...action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality."

See also 40 C.F.R. § 1504.1(b).

Similarly, under Section 102(2)(C) of NEPA, other federal agencies may review environmental impact statements and may ask the Council to make findings and recommendations regarding the acceptability of the anticipated environmental effects. See 40 CFR § 1504.1(c).

A referral currently pending before CEQ involves a proposal by the Department of the Interior, Bureau of Reclamation, to renew long-term water contracts for the Orange Cove and other Friant Unit irrigation districts of the Central Valley Project in California. The Department of the Interior has taken the position that NEPA does not require an EIS for the renewal of the contracts.

EPA referred this matter, stating that "making irretrievable long-term commitments of water use without benefit of an EIS violates the purposes and intent of NEPA." Letter from John A. Moore, Acting Administrator, EPA, to the Honorable A. Alan Hill, Chairman, CEQ, February 2, 1989.

CEQ published a Federal Register notice on February 9, 1989, seeking public comment on whether the issue raises issues of national importance, whether CEQ should proceed with consideration of the issues raised in the referral, and suggestions as to procedures to be followed should the referral be accepted. In addition, the notice indicated that the Department of the Interior was expected to respond to the matters raised in EPA's referral letter by February 28, 1989. CEQ is now deciding whether to accept the referral.

In the most recently completed referral, the Department of the Interior asked the Council to review a proposal by the Department of the Navy (United States Marine Corps) to establish the Cherry I and Core Military Operating Areas (MOA) at Cherry

Point, North Carolina. The primary issue raised in the referral was the potential noise impact on the Cape Lookout National Seashore which is managed by the National Park Service. The Council held a public meeting in January, 1988, and provided an opportunity for written comments to be submitted for the Council's consideration. Council Chairman Hill conducted a site visit and held additional meetings in the area in May, 1988.

By letter dated September 13, 1988, the Council made several findings and recommendations. First, the Council was unable to conclude that there were any reasonable alternative sites available to the Marine Corps for its low altitude, high speed training flights. Thus, the Council stated that the National Park Service and the Marine Corps should work together to mitigate the expected noise impacts on the seashore. As part of this resolution, the Marine Corps should undertake environmental monitoring studies which examine the actual impacts of the overflights on the park.

Second, the Council found that the cumulative effects of military airspace use over North Carolina had not been adequately considered, and that the Federal Aviation Administration (FAA), the agency which will give final authority for the overflights, must prepare a cumulative impact analysis as part of its NEPA documentation for the Cherry I and Core MOA designation request.

Finally, the Council found a need for coordination within the Department of Defense to adequately assess the cumulative impacts of the military agencies' airspace use requests, and a

need for consideration of the inherent conflicts between airspace use and land use below. The Council also found that the FAA needs to play a larger role in the assessment of competing uses and of cumulative impacts of all its airspace designation decisions.

Environmental Data Acquisition and Assessment

In its environmental data acquisition and assessment program, CEQ/OEQ's objective is to improve federal data and monitoring capabilities and to track the numerous environmental research and monitoring programs of federal agencies. The most recent activity is this regard is an interagency effort, coordinated by CEQ/OEQ, to update information about environmental data sources and to produce an Environmental Trends 2 report.

CEQ/OEQ had the central coordinating role in developing the first Environmental Trends report and co-sponsoring its initial publication in 1981. The revision of the report at 5-year intervals was deemed a meaningful time period for discernable trends to develop. Through the use of maps and charts, the report is designed to portray quantitatively the current conditions and trends in the quality of the environment.

An interagency working group for the second report was established in 1985, with membership from approximately 15 agencies. Multi-agency funding was begun and a support contract awarded. The interagency working group continued to meet frequently for planning and evaluation of draft products.

Although work has progressed at a slow pace the report is now essentially complete and it is undergoing interagency review. Publication is expected in the near future.

OEQ Management Fund

CEQ/OEQ acts as the environmental coordinator, mediator, and consultant for the Executive Branch of the federal government. In this capacity, the Council/Office conducts various activities in cooperation with other agencies to develop and implement environmental policies for the Administration. To facilitate this function, the Office of Environmental Quality has been granted statutory authority for a management fund account to finance "(1) study contracts that are jointly sponsored by the Office and one or more other federal agencies; and (2) Federal interagency environmental projects (including task forces) in which the Office participates." (Pub. L. No. 98-581).

The fund was established pursuant to the most recent Reauthorization Act for OEQ and began actual operation in FY 1985. This new account replaced a Consolidated Working Fund, which had previously been granted on an administrative basis to the agency by the Office of Management and Budget. The Management Fund is more suitable administratively for conducting studies, projects, and task forces with other agencies about emerging environmental policies. In addition, the existence of a statutorily-established Management Fund improves the ability of Congress to oversee operation of the fund.

To establish and maintain financial integrity and accountability, the fund is required to publish internal policies and procedures to govern its operation. Further, the annual budget estimates for the Management Fund are presented as a separate schedule in the Appendix for the Budget of the United States.

For accounting and budget presentation purposes, the Management Fund is divided into two program divisions: Division 100 -- Environmental Policy Development Studies and Projects, and Division 200 -- Interagency Task Force on Acid Precipitation (ITFAP) which operates the National Acid Precipitation Assessment Program (NAPAP).

Division 100 (Environmental Policy Development Studies and Projects)

All proposed projects are first reviewed for scientific merit and technical validity by a Council Member. The Director of OEQ then considers any recommendation for approval, taking into account the project's potential to contribute to agency program goals. Those proposals with interdisciplinary, international, or intergovernmental elements are more attractive, as are projects in which CEQ/OEQ involvement provides enhanced public participation, objectivity, independence, or technical expertise.

The oversight and quality control which OEQ provides for these studies and projects insures that the work is conducted quickly, efficiently, and competently. Potential conflicts of interest between the sponsoring agency and the contractor can

also be avoided. It should be stressed that CEQ/OEQ has a fundamental interest in each Division 100 interagency study or project it undertakes.

Division 200 (Interagency Task Force on Acid Precipitation)

The NAPAP Office of the Director operates through the OEQ Management Fund. The NAPAP Joint Chairs Council, representing NAPAP's major funding agencies, approves a total NAPAP budget, which is apportioned to individual participating agencies. Based on each agencies' proportional share of the total research budget, funds to support the Office of the Director are transferred to the OEQ Management Fund for financial management of NAPAP's coordinating activities. All obligations of federal funds from Division 200 are reviewed and approved by CEQ's Administrative Specialist or, for larger amounts, by the CEQ Member who serves as the Executive Secretary to the ITFAP.

The program expenses for NAPAP's Office of the Director are different from those for contract studies. NAPAP operates as an independent accounting entity from its member agencies. Several federal agencies contribute funds (through interagency agreements) and detail personnel to support ITFAP activities. The Office of the Director pays for its administrative costs and its contract expenses from the Management Fund account. Thus, its operating budget includes all object class categories, except for personnel and official representation.

H.R. 1113: Authorizing Appropriations for OEQ and Amending NEPA

Chairman Studds recently introduced legislation which would not only authorize appropriations for OEQ, but also amend NEPA in several significant ways. NEPA has worked well for the last two decades, and amendments to the statute should be made only after careful consideration. Amendments should not be made when regulatory modifications or guidance from the Council would suffice. With that thought, I will briefly comment on the NEPA amendments proposed in H.R. 1113.

Section 1

Section 1 of H.R. 1113 seeks to apply the NEPA process to actions taken by the federal government outside of the boundaries of the United States. This is a complex issue affecting a multitude of interests, and is one on which the current administration has not yet developed a position.

I have no comments on the other provisions of this section.

Section 2

Section 2 of H.R. 1113 seeks to amend Section 201 of NEPA by requiring that the CEQ annual report become more of a policy document, rather than a document which must comprehensively review the status of all environmental media.

Although some modification of the annual report may be appropriate, I believe that the current report can and does achieve many objectives of this section.

While the present Council has worked very hard to prepare extensive Environmental Quality reports in compliance with Section 201, that process is quite time-consuming. We have

relied heavily on other federal agencies for necessary information, but, understandably, these other agencies cannot place a high priority on assisting in the preparation of CEQ's report. For this reason, we have been regrettably slow in producing the Environmental Quality report, although I am pleased to say that due to extraordinary efforts we are about to bring ourselves up-to-date by publishing the 1987 and 1988 reports together as one document in the near future.

Section 3

Section 3 seeks to provide statutory authority for the CEQ regulations promulgated in 1978 pursuant to Executive Order No. 11991. I support this provision and believe that it would end a continuing, and sometimes disruptive, debate over the applicability of CEQ's NEPA regulations to independent regulatory agencies.

Section 4

Section 4 of the proposed bill seeks to require each federal agency to review "a statistically significant sample of ...[EISs] in which measures were specified for the mitigation of any adverse impact on the environment that was predicted to occur as a result of the agency action." This provision is similar to provisions in H.R. 2020 and S. 1792, passed by the House and Senate respectively in the last session of Congress.

My comment with respect to the mitigation and monitoring requirement in H.R. 1113 is the same as my comments with respect to the earlier legislative proposals. While I believe that a review of mitigation implementation may be appropriate, the process described in H.R. 1113 could prove to be quite burdensome on CEQ and the other federal agencies. I suggest that federal agencies be required to undertake a one-time review of the mitigation measures imposed in a representative sample of EISs, the accuracy of the predictions made in those EISs, and the effectiveness of the mitigation measures. The agencies would submit their analyses to CEQ which would report to Congress and make recommendations regarding the need for additional, periodic mitigation implementation reviews.

Section 5

Section 5 would have CEQ issue regulations requiring federal agencies to fully consider the impacts of their actions on areas outside the jurisdiction of the United States, including the impacts of proposed federal actions on global climate change,

depletion of the ozone layer, sea level rise, and other phenomena of international environmental concern.

As noted above, the question of the extraterritorial application of NEPA is one which has been debated for almost 19 years, and is one on which the current administration has not yet taken a position.

With respect to other global environmental issues, however, this Subcommittee is aware that the Council, within the framework of the Domestic Policy working group on Environment, Energy and Natural Resources, is already addressing the question of how federal agencies should consider the impact of their actions on global climate change, including stratospheric ozone depletion and global warming. Neither a statutory nor a regulatory change is needed to consider these issues in EISs.

Specifically, the Council held a series of public meetings in which we heard from scientific experts and from representatives of federal agencies. At the conclusion of these meetings, the Council developed guidance to the federal agencies on how global climate change should be addressed in NEPA documents. This guidance is still in draft form, and has not yet undergone interagency review and comment. That process will begin in the near future.

In developing this guidance, the Council recognizes that NEPA already provides the statutory authority for the consideration and analysis of global environmental issues. In sum, I do not believe that the statute should be amended to

address specific concerns; rather, it should remain a generic statute with the Council issuing guidance as appropriate.

Section 6

Section 6 would authorize one million dollars annually for operation of the Office of Environmental Quality form 1989 - 1993. The program covered by this legislative proposal is included in the residual freeze category of the President's FY 1990 budget plan. For OEQ this amount is 575 thousand which reflects President Reagan's FY 1990 budget request. Final decisions concerning programs in this category are to be determined through negotiations between the Administration and Congress and thus the current 575 thousand may need to be revised to reflect the results of such negotiations.

That completes my prepared statement. I would be pleased to answer questions from the Subcommittee.

STATEMENT OF
JENNIFER JOY WILSON
ASSISTANT ADMINISTRATOR FOR EXTERNAL AFFAIRS
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION
AND THE ENVIRONMENT
COMMITTEE ON MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES
MARCH 7, 1989

Good morning, Mr. Chairman and members of the Subcommittee, I am pleased to appear before you today. At your request, I will discuss the Environmental Protection Agency's (EPA) views on the reauthorization of the Office of Environmental Quality and amendments to the National Environmental Policy Act (NEPA).

In the nearly twenty years since Congress passed NEPA this law has, on the whole, been an outstanding success in getting Federal decision-makers to consider and document environmental issues early in the planning stages for Federal projects. We see no need for major changes in the NEPA process.

While most public and Congressional attention has focused on specific, controversial Environmental Impact Statements (EISs) under NEPA, its most important contribution to environmental protection may well be the development of a consistent and uniform process for environmental evaluation and public disclosure across the entire Federal sector. Further, the process has become less burdensome as agencies integrate environmental reviews into their operating procedures, incorporate environmental considerations into early project design, and as they gain experience in writing environmental reviews. Thus, we now see approximately 425 draft and final EISs being produced annually, which is down from the

peak of 1800 which were done annually during the early 1970s. It should be noted that 10,000 to 20,000 Environmental Assessments (EAs), accompanied by Findings of No Significant Environmental Impact, are also prepared each year.

Nor is the success of NEPA limited to the Federal government. Twenty-seven states have developed some form of NEPA-like review requirements applicable to state projects, and a number of foreign countries have adopted environmental review legislation modelled on the U.S. NEPA. EPA has also stimulated the development of environmental review procedures by states in its implementation of the State Revolving Loan Fund (SRF), the successor to the Federal wastewater treatment construction grants program. EPA's approach to environmental review under the SRF is worth noting. Rather than advocate an inflexible application of the Federal NEPA, the Agency is encouraging "NEPA-like" procedures under state law, which are suited to individual state conditions and legal structures. We believe this approach offers the best means of establishing substantive environmental review programs which will be supported and continued by the states.

EPA believes that the NEPA process has paid off in real environmental benefits. In our own experience with wastewater treatment plants, for example, we found in a 1980 review of 58 EISs that over 70% of them resulted in greater protection of surface water quality. Induced development was controlled as a result of 50% of the EISs. Other areas of environmental concern positively affected by significant percentages of the EISs were

floodplains, wetlands, archaeological sites, open space and recreation, prime agricultural lands, and historic sites.

In addition, we have found that NEPA can help assure judicious expenditure of public funds. While costs were incurred for preparation of EISs and as a result of project delays (especially during the inflationary period of the late 1970s), we also found that in half of the wastewater treatment projects cost reductions were achieved due to changes required by the EIS. The net effect of an average EIS turned out to be a reduction in total project costs. As we strive to make government efforts both cost-effective and environmentally sound it is important to remember that the two goals can often be compatible. NEPA is a sound and tested process for making decision-makers aware of the environmental costs of government action, which often turns out to have economic costs as well.

EPA/CEQ Coordination on NEPA Reviews

Under Section 309 of the Clean Air Act the EPA has a unique role in the environmental impact statement (EIS) process. This law requires EPA to review and comment in writing on all major Federal actions subject to NEPA, proposed regulations and Administration proposals for legislation. Should the Administrator find any action reviewed unsatisfactory from the standpoint of public health and welfare or environmental quality, he is required to publish his determination and the matter is referred to the CEQ. At this point the CEQ can pursue a variety

97-423 O - 89 - 3

of actions - including negotiating between EPA and the lead agency, publication of CEQ's findings and recommendations, or submittal of the issue to the President. CEQ also plays an important part in the 309 process which goes far beyond the referral process, by working with EPA and the lead agencies to address problems which EPA has identified in draft EISs. The negotiation function played by CEQ is critical in producing acceptable projects, since referrals are generally rare (24 of them since NEPA was enacted), and most of EPA's concerns are worked out in the process of developing final EISs.

CEQ Guidance

It is also important that we recognize the important role CEQ has played in coordinating environmental policy among Federal agencies which EPA Administrator Reilly referred to in his confirmation hearing. CEQ guidance on NEPA mitigation, for example, could be very important in efforts to assure achievement of this Administration's goal of no net loss of wetlands. The Administration's goal of achieving economic growth and resource development while protecting the environment can be advanced by CEQ's role in negotiating environmental issues between Federal agencies.

EPA believes that issuance of regulations and guidance on NEPA is a key means of achieving coordinated environmental policies among Federal agencies. CEQ's role may become even more important as we increasingly face environmental problems which cut

across many agencies, involve cross-media issues and which are national or international in scope. Biodiversity is an issue which may require guidance or coordination by CEQ. As with the referral process, this area requires that the OEQ have sufficient expertise to independently analyze issues and produce guidance documents.

International Environmental Assessment Activities

As environmental problems become increasingly international in scope it is becoming necessary to develop international cooperation to address these issues. The CEQ, in EPA's view, performs an important role in this area, particularly in advising other countries and international organizations on the legal aspects and institutional aspects of NEPA. Because of its leadership role in U.S. NEPA implementation the CEQ has had an important function in developing recommendations for environmental impact assessment procedures by the United Nations Environment Program (UNEP) and the UN Economic Commission for Europe. The CEQ has also participated in bi-lateral agreements under the Agreement on Cooperation in the Field of Environmental Protection between the United States and the Soviet Union through an exchange of attorneys concerned with the development of environmental impact assessment procedures.

NEPA Amendments

I would now like to address EPA's views on some of the changes to NEPA which have been proposed.

(1) It has been proposed to amend Section 204 to make explicit the authority of CEQ to promulgate binding regulations governing the implementation of NEPA by all Federal agencies, including independent Federal regulatory commissions. EPA supports this amendment and believes that providing a statutory basis for CEQ's regulatory authority would clear up any remaining doubts as to the applicability of the existing CEQ regulations.

(2) It has been proposed to amend Section 104 to specify that no Federal action shall be exempt from the requirements of NEPA unless explicitly exempted by law. It is not clear what the effect of this amendment would be, and we believe it needs to be considered very carefully. We believe that CEQ and the courts have adequately clarified NEPA applicability regarding the domestic activities of Federal agencies, and we therefore see no need for this amendment. In addition, EPA is very concerned that this amendment could be disruptive to environmental review procedures which are currently in place for many of EPA's programs. These procedures reflect the requirements of EPA's various authorizing statutes and are functionally equivalent to NEPA. They have survived a number of court challenges over the last fifteen years, and reflect the unique requirements of EPA's mission and the requirements of the specific environmental

statutes. EPA believes that applying additional requirements to these programs would be disruptive and costly and would achieve no substantive environmental results.

(3) It has been proposed to amend NEPA to require that each Federal agency review a statistically significant number of EISs prepared in which measures were specified for the mitigation of the adverse impact on the environment, and determine if mitigation measures were actually carried out. CEQ would be required to include a summary of these Agency reviews in its annual report to Congress. EPA believes that a review of NEPA mitigation by Federal agencies (including EPA itself) is long overdue and agrees that a statutory requirement would be an effective way to get an assessment across the entire Federal sector. However, we believe the specific amendment being considered could be unnecessarily burdensome. It is not clear how many EISs would have to be reviewed to be statistically significant, nor how far back agencies should go in selecting EISs as samples. The amendment also appears to require an annual survey, which may not be productive. Since resources for a review of mitigation will undoubtedly have to be taken from those needed for environmental assessments and EISs, the proposed requirements must be considered very carefully. EPA suggests, as an alternative, that agencies be required to carry out a one-time study of NEPA mitigation under the direction of CEQ. The CEQ would then review the results and prepare a report to Congress summarizing findings and recommending needed measures, if any, to

assure implementation of mitigation measures identified in NEPA reviews.

(4) Another amendment would change section 102(2)(C) to cover major Federal actions which occur outside the boundaries of the U.S. This would apply to actions overseas which are now covered under Executive Order 12114 ("Environmental Effects Abroad of Major Federal Actions"). EPA is not convinced that applying NEPA, a domestic U.S. statute, would necessarily achieve the desired result of ensuring that U.S. overseas actions are environmentally sound. However, this is an issue on which the current Administration has not yet established a position.

(5) Section 5 of the proposed reauthorization bill would require CEQ to issue regulations requiring consideration of specific environmental impacts outside the U.S., including global climate change, depletion of the ozone layer, and sea level rise. We do not believe that an amendment requiring specific regulations is required.

We have no comments on other proposed amendments.

Concluding Remarks

In summary, I want to leave you with the understanding that NEPA is fundamentally sound. It has generally worked well over the years and the results we have achieved in terms of environmental decisions have improved as Federal agencies have progressed in their understanding and application of the concepts and procedures of NEPA. With some refinement, I am confident that

NEPA will continue to provide a sound framework for good environmental decisions in the years ahead.

NEPA is, in my judgement, one of the fundamental keys to the vision which this Administration has of a clean and healthful environment, while maintaining a sustainable level of economic growth. Its successful application depends in large part on maintenance and perhaps enhancement of the existing system of checks and balances, of which CEQ is a key part. EPA believes that the oversight role of CEQ in NEPA matters in general and in coordination of environmental policy among Federal agencies should be a strong one.

This concludes my prepared remarks. I would be happy to answer any questions the Subcommittee may have.

Natural Resources
Defense Council

1350 New York Ave., N.W.
Washington, DC 20005
202 783-7800

TESTIMONY

OF

DAVID A. WIRTH

ON BEHALF OF

NATURAL RESOURCES DEFENSE COUNCIL

AND

SIERRA CLUB

BEFORE THE

SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION
AND THE ENVIRONMENT

HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

MARCH 7, 1989

New York Office:
122 East 42nd Street
New York, New York 10168
212 949-0049

Western Office:
90 New Montgomery
San Francisco, CA 94105
415 777-0220

New England Office:
850 Boston Post Road
Sudbury, MA 01776
617 443-6300

Toxic Substances
Information Line:
USA: 1-800 648-NRDC
NYS: 212 687-6862

I am David A. Wirth, Senior Attorney with the Natural Resources Defense Council (NRDC). I appreciate the opportunity to testify today on behalf of NRDC and the Sierra Club on H.R. 1113 and the application of the National Environmental Policy Act (NEPA) to international and global environmental issues. The organizations I represent today have a combined membership of more than 600,000 concerned individuals distributed through every state.

NRDC as an organization and I personally have long-standing professional association with the international application of NEPA. For instance, I am the author of a chapter in a forthcoming book discussing the application of NEPA to international technology transfers.[1] Prior to joining the staff of NRDC slightly more than 3 years ago, I was the attorney in the State Department's Office of the Legal Adviser with primary responsibility for assuring NEPA compliance by that agency.

We have recently become particularly concerned about questions concerning the application of NEPA to the urgent issue of climate disruption. A piece of mine discussing the necessity for early, coordinated international action to avert the threat of climate upheaval appears as the lead article in the current

---

[1] Wirth, International Technology Transfer and Environmental Impact Assessment, in TRANSFER OF HAZARDOUS TECHNOLOGY: THE INTERNATIONAL LEGAL CHALLENGE ___ (G. Handl & R. Lutz ed. 1989)(in press).

issue of Foreign Policy magazine.[2] A column which I co-authored with Glenn Prickett of NRDC discussing the need for consideration of climate change in the NEPA process will appear in the March issue of Environment magazine.[3] NRDC is also the plaintiff in a pending lawsuit against the National Highway Traffic Safety Administration challenging as a NEPA violation a recent federal decision to decrease average fuel economy standard for 1989 automobiles without preparing an environmental impact statement (EIS) that addresses the implications of this action for the global climate.[4]

Mr. Chairman, for the reasons below, NRDC and the Sierra Club are pleased to support the general purposes of H.R. 1113, and in particular the portions of the bill which would clarify that NEPA applies with full force to federal actions with impacts on the environment of foreign nations or the global commons.

Although my testimony today focuses primarily on this point, we are also particularly appreciative of the portion of the bill that would establish a statutory authorization for the NEPA regulations promulgated by the Council on Environmental Quality

---

[2] Wirth, Climate Chaos, FOREIGN POLICY, Spring 1989, at 3.

[3] Prickett & Wirth, Environmental Impact Statements and Climate Change, ENVIRONMENT, Mar. 1989, at ___ (in press).

[4] Natural Resources Defense Council, Inc. v. National Highway Traffic Safety Administration (9th Cir. filed Oct. 27, 1988).

(CEQ). Moreover, we believe that the authorization for an annual appropriation of $1 million contained in H.R. 1113 is the minimum amount necessary to assure that CEQ performs its functions effectively.

I. THE "NEPA ABROAD" QUESTION

The applicability of NEPA to impacts occurring abroad is currently an unsettled area of the law.[1] Moreover, the procedures currently followed by the majority of, if not all, federal agencies virtually guarantee that the impacts of federal actions on the environments of foreign countries receive inadequate treatment when measured against the standards of NEPA and CEQ's implementing regulations.

As a result of a lengthy debate within the Executive Branch on the "NEPA Abroad" question, an executive order was promulgated in 1979 on the environmental effects abroad of major federal

---

[1] See Natural Resources Defense Council, Inc. v. Nuclear Regulatory Comm'n, 647 F.2d 1345, 1366 (D.C. Cir. 1981) (EIS analyzing effects abroad not required for issuance of nuclear export license, but not deciding whether NEPA applies to other major federal actions with extraterritorial effects). See also Nat'l Org. for the Reform of Marijuana Laws v. United States Dep't of State, 452 F. Supp. 1226 (D.D.C. 1978) (applicability of NEPA to pesticide spraying in Mexico to destroy marijuana plants assumed without deciding); Sierra Club v. Coleman, 405 F. Supp. 53, 421 F. Supp. 63 (D.D.C. 1975, 1976) (assuming applicability of NEPA to highway through Panama and Colombia), vacated, 578 F.2d 389, 391 n.14 (D.C. Cir. 1978) (declining to decide issue in view of impacts in United States).

actions.' The 1979 executive order was a conscious attempt substantially to attenuate the standards of NEPA and CEQ's regulations issued under the statute when applied to federal actions with impacts in other countries. The 1979 executive order has been widely criticized for weakening the substantive

---

' Exec. Order No. 12,114, 3 C.F.R. 356 (1980), reprinted in 42 U.S.C. § 4321 app. at 515. The following agencies have adopted procedures for implementing the executive order: Department of Agriculture, 7 C.F.R. § 1b.2(e); Export-Import Bank, 12 C.F.R. §§ 409.1-.14; National Aeronautics and Space Administration, 14 C.F.R. § 1216.321; Food and Drug Administration, 21 C.F.R. § 25.50; Agency for International Development, 22 C.F.R. § 216; Department of Defense, 32 C.F.R. §§ 197.1-.6; Department of the Army, 32 C.F.R. §§ 651.34-.40; Environmental Protection Agency, 40 C.F.R. §§ 6.1001-.1007; Federal Maritime Commission, 46 C.F.R. §§ 504.1-.10; National Oceanic and Atmospheric Administration, 49 Fed. Reg. 29,644 (1984); International Boundary and Waters Commission, 46 Fed. Reg. 44,083 (1981); Department of Energy, 46 Fed. Reg. 1007 (1981); Department of the Treasury, 45 Fed. Reg. 47,626 (1980); Department of State, 44 Fed. Reg. 67,004 (1979); Overseas Private Investment Corporation, 44 Fed. Reg. 51,385 (1979). See also 44 Fed. Reg. 65,560 (1979) (unified procedures applicable to major federal actions relating to nuclear activities subject to Executive Order No. 12,114).

and procedural scope of environmental assessments for activities of the United States government with effects abroad.[7]

Under the executive order, NEPA and the CEQ regulations apply with full force only to federal actions that have impacts on the "global commons," such as the oceans or Antarctica. Presumably, this could also include the global atmosphere. However, effects on the atmosphere are not specifically mentioned in the order. All other federal actions with effects abroad receive a considerably abbreviated treatment in one of two forms: (1) a bilateral or multilateral review conducted together with the other country or countries concerned; or (2) a "concise environmental review" (CER) performed unilaterally by the U.S. agency proposing the action in question.

Despite the fact that public participation procedures are a central component of NEPA and CEQ's regulations, the executive

---

[7] See generally Gaines, "Environmental Effects Abroad of Major Federal Actions": An Executive Order Ordains a National Policy, 3 HARV. ENVTL. L. REV. 136 (1979); Note, Executive Order on Extraterritorial Environmental Impacts, 13 J. INT'L L. & ECON. 455 (1979); Note, Exports and Environmental Responsibility: Applying NEPA to the Export-Import Bank, 12 CORNELL INT'L L.J. 247 (1979); Note, The Extraterritorial Application of NEPA under Executive Order 12,114, 13 VAND. J. TRANSNAT'L L. 173 (1980); Comment, Federal Agency Responsibility to Assess Extraterritorial Environmental Impacts, 14 TEX. INT'L L.J. 425 (1979); Note, The International Application of the National Environmental Policy Act of 1969: A New Strategy, 1979 WASH. U.L.Q. 1063; Note, The "NEPA-Abroad" Controversy: Unresolved by an Executive Order, 30 BUFFALO L. REV. 611 (1981); Comment, President Orders Environmental Review of International Actions, 9 ENVTL. L. REP. (ENVTL. L. INST.) 10,011 (1979).

order totally fails to mention any opportunity for public input, either within the United States or in the country in question. Except in unusual cases -- at least at the State Department -- the public is not even informed that a cooperative review or a unilateral CER is in preparation. Moreover, the 1979 executive order explicitly states that it shall not be construed to create a cause of action. Thus, to the extent it applies, the order arguably undermines the opportunity for judicial review that is a crucial prerequisite for the enforcement of NEPA in the case of domestic impacts.

The 1979 executive order also contains sweeping exemptions that exclude broad categories of federal actions from even the minimal requirements set out in the order. For example, the executive order contains a broad exclusion for situations in which the foreign nation affected by the action participates with the United States. It specifically removes from its scope all votes in international organizations. Consequently, actions on such environmentally sensitive matters as votes on World Bank loans have never been systematically analyzed. The executive order also exempts all export licensing proceedings except those involving nuclear technologies.

Mr. Chairman, the 1979 executive order was promulgated more than 10 years ago. At that time, many in the environmental community were concerned that it would undermine the NEPA process

with respect to impacts occurring abroad. Ten years later, that fact -- as described in the remainder of my testimony -- can now be documented. The executive order has not encouraged systematic, sound analysis, but instead has spawned abuses. We are very pleased that H.R. 1113 would reverse this short-sighted decision.

Despite our generally supportive reaction to the bill, we do have serious reservations about section 5(b)(3), which would exempt from the scope of NEPA "votes and other actions in international conferences and organizations." Mr. Chairman, after more than three years of work on this issue, we can say definitively that these categories of actions may have among the most profound environmental implications. For example, case studies have documented that projects financed with little regard for the integrity of natural resources by multilateral donors such as the World Bank have seriously exacerbated forest loss in key countries such as Brazil and Indonesia.

If the Subcommittee feels that it is impractical or burdensome for the federal agencies concerned to perform EISs for these actions in international conferences and organizations, then we recommend that the bill be recast to create an incentive for the preparation of an equivalent document by the international organization in question. For instance, the bill might specify that, as of a date certain, the United States must

abstain on any loans in the World Bank that are not accompanied by the functional equivalent of an EIS.

II. THE GLOBAL COMMONS: THE "GREENHOUSE EFFECT"

The necessity for a specific statutory instruction directing all federal agencies fully to comply with NEPA in the case of impacts on the global commons is clearly demonstrated by a recent fiasco involving CEQ's proposed issuance of policy "guidance" concerning climate change and stratospheric ozone depletion.

Recognizing the central importance of the NEPA process to the greenhouse debate, CEQ held a public meeting on September 9 of last year at which it heard the testimony of nine agency witnesses and a statement I presented on behalf of five national environmental organizations.* Few of the federal witnesses could recall any instances in which an EIS had analyzed the issue of climate change. Many of these witnesses argued that examining climate change in an EIS was impossible and unnecessary.

To clarify the applicability of NEPA and the CEQ regulations to the pressing issue of climate change, the Council in the fall of last year prepared draft guidance stating that "each federal

---

* See Letter from David A. Wirth, Senior Attorney, Natural Resources Defense Council, to A. Alan Hill, Chairman, Council on Environmental Quality (Nov. 9, 1989)(statement on behalf of NRDC, Sierra Club, National Wildlife Federation, Environmental Defense Fund, and Environmental Policy Institute).

agency should immediately review whether and to what extent its activities (both continuing and proposed) contribute, directly or indirectly, to the emission of CFCs or greenhouse gases and thus to global climatic change." Nevertheless, in its waning days the Reagan White House thwarted the issuance of this policy guidance.[9] The Executive Branch continues to drag its feet by denying the necessity for federal agencies to examine the role of their activities in the predicted warming of the earth's atmosphere.[10]

Given the record of the new Administration to date, the Congress cannot assume that the Executive Branch will take this modest but necessary step to safeguard the atmosphere without an explicit statutory directive. Moreover, any additional delay will also have serious adverse implications for mobilizing other nations to act to prevent greenhouse-driven climate anarchy. The United States is the largest national and per capita emitter of greenhouse gases. We cannot long expect others -- especially those in countries far poorer than ours -- to take this issue seriously if our own government refuses to take a leadership role.

---

[9] See Reagan Aide Blocks "Greenhouse" Rule, Washington Post, Jan. 11, 1989, at A4.

[10] See "Greenhouse Effect" Plan May Be Revived, L.A. Times, Feb. 17, 1989, at 29 (quoting Deputy White House Press Secretary Steve Hart as saying "[t]here's been no policy review undertaken on this topic by the Bush Administration.")

Two aspects of the climate issue that appear to present the greatest difficulty to federal decisionmakers are the numerous and varied sources of greenhouse gas emissions and the scientific uncertainty surrounding detailed predictions. However, it is precisely these aspects of the greenhouse problem that are optimally addressed by, and demand the application of, the NEPA process.

Although individual federal actions may only affect a small fraction of global greenhouse gas emissions, the cumulative impact of numerous programs and projects is demonstrably significant. The necessity for analysis of "cumulative" impacts is firmly established in CEQ's regulations and case law. According to the Council's regulations, "[c]umulative impacts can result from individually minor but collectively significant actions taking place over a period of time."[11]

CEQ's regulations also clearly state that, in the face of scientific uncertainty, agencies must evaluate "reasonably foreseeable" impacts "based on theoretical approaches or research methods generally accepted in the scientific community."[12] The

---

[11] 40 C.F.R. § 1508.7.

[12] 40 C.F.R. § 1502.22. CEQ's 1986 amendment to 40 C.F.R. § 1502.22 did not eliminate the requirement of a "worst case" analysis, which is inherent in the statute. See Methow Valley Citizens Council v. Regional Forester, 833 F.2d 810, 817 n.11 (9th Cir. 1987), cert. granted, 56 U.S.L.W. 3872 (1988); Oregon

definition of "reasonably foreseeable" includes "impacts which have catastrophic consequences, even if their probability of occurrence is low." All predictions of climate change predict catastrophic impacts which plainly meet this test. Climate modeling is sufficiently sophisticated both to permit and to require federal agencies to consider climate change in their EISs.

The formulation of a coordinated national policy to reduce greenhouse gas emissions and to plan for adaptation to a changing climate requires comprehensive analyses of all government programs and projects. The central objective of NEPA, represented concretely by the environmental impact statement, is to encourage precisely this type of across-the-board analysis of government actions. Consideration of greenhouse gas emissions and climate change impacts can and must be included in the planning process for a wide variety of federal actions, including the following:

- actions which may alter rates of emissions of greenhouse gases from sources such as automobiles and fossil fuel-fired power installations, including proposals to relax vehicle fuel efficiency standards and policies that would encourage development of fossil fuel reserves or reliance on fossil fuels;

Natural Resources Council v. Marsh, 820 F.2d 1051, 1058 n.8 (9th Cir. 1987), cert. granted, 56 U.S.L.W. 3879 (1988). However, we assume, strictly for the purposes of argument, the applicability of the Council's 1986 amendment.

- actions which could affect patterns of energy consumption, such as purchases of lighting, appliances, or insulation for federal facilities and the establishment of research and development priorities in the energy sector;

- actions which may result in changes in forest cover, such as decisions to permit logging in national forests;

- actions, the viability of which could be affected by sea level rise, such as siting a federal building or permitting a hazardous waste disposal facility in a coastal area;

- actions, the viability of which could be affected by shifts in agricultural or forest productivity, such as acreage adjustment and price support programs for farm commodities, international trade agreements involving export sales of grain, wood products, or similar commodities, and soil and water conservation programs; and

- actions which might encourage, promote, subsidize, or contribute directly or indirectly to development of coastal areas vulnerable to sea level rise, such as the National Flood Insurance Program and programs under the Disaster Relief Act.

Mr. Chairman, NRDC and the Sierra Club firmly believe that NEPA and the CEQ regulations already require the analysis of impacts on the global commons, such as the composition of the atmosphere. It is apparent, however, that there are those in the Executive Branch who strongly dispute this point. NRDC has already raised this issue in the courts. But resolving this matter in the Judicial Branch could take years -- precious time that should instead be spent in crafting substantive policy on the pressing issue of climate disturbance. For this reason, we strongly support section 5 of H.R. 1113.

III. IMPACTS ABROAD: CENTRAL AMERICA MEDFLY ERADICATION

The need to analyze the impacts of U.S. actions in foreign countries is demonstrated concretely by the example of two pest eradication programs proposed to be undertaken by the Department of Agriculture (USDA) with the cooperation of the U.S. Agency for International Development (A.I.D.). The two projects are MOSCAMED, a plan to eliminate the Mediterranean fruitfly (medfly) from Guatemala using aerially sprayed toxic chemical pesticides, and CAPMED, a similar program covering all of Central America.

Medfly has already been eradicated from Mexico using United States funds, and USDA is maintaining a "barrier" in Guatemala to prevent reinfestation. The next phase of MOSCAMED would extend eradication efforts to other areas of Guatemala in part with USDA funds and in part with so-called P.L. 480 "Food for Peace" local currencies, which USDA administers jointly with A.I.D. The project would cost approximately $30 million over a 4-year period and would involve extensive reliance on the pesticides malathion and methyl bromide. MOSCAMED and CAPMED -- at least as envisioned until recently -- anticipate the widespread and indiscriminate aerial spraying of a malathion-laced bait. The fumigant methyl bromide would be used to treat produce moving from a fly-infested area to a fly-free zone.

CAPMED would push the barrier currently in Guatemala to the Darien Gap in Panama at an estimated cost of $350 million over a

9-year period. Although other countries may contribute to the project, with the United Nations Food and Agriculture Organization playing a coordinating role, the bulk of CAPMED's massive cost -- nearly half of which would go for pesticide purchases -- would be shouldered by the United States.

Malathion is a broad-spectrum insecticide which could have adverse effects on honeybees, fish, and shellfish of commercial importance in the region. It could also harm other potentially beneficial insect species, such as pollinators of economically important crops like cardamom, and could substantially reduce biodiversity and deplete endangered species in the area.

Public protests forced USDA and the Government of Guatemala to abandon the use of use of ethylene dibromide (EDB) -- a deadly cancer-causing fumigant that has been banned for use in the United States -- in favor of methyl bromide. The substitution of methyl bromide, which also presents extreme hazards to human health, can hardly be considered an improvement over EDB. The Environmental Protection Agency (EPA) describes methyl bromide as "highly acutely toxic," and effects on the kidneys and lungs of exposed workers are well documented. There are also indications that methyl bromide causes cancer and birth defects. Moreover, there are numerous data gaps for this pesticide that make informed decisions about its use impossible. This is particularly true if the pesticide is proposed for use in Central

America, where precautions to reduce health and environmental risks are likely to be fewer than in the United States.

After expressions of outrage from a coalition of organizations representing environmental, academic, and economic concerns in Guatemala and Costa Rica, several years of work by NRDC, the Sierra Club, and other organizations, and numerous interventions from both Houses of the Congress,[13] A.I.D. undertook an "environmental impact analysis" (EIA)[14] released in July of last year. The A.I.D. EIA, which is the most comprehensive study of MOSCAMED to date, demonstrates that the project cannot be justified on either environmental or economic grounds.

The EIA describes instances of blatant pesticide abuse that have been characteristic of MOSCAMED throughout its six-year history. It documents that workers were found playing cards and sleeping in chambers for fumigating fruit with methyl bromide.

---

[13] See Environmentalists Abuzz Over Fruit Fly Spraying: Funds for Eradication in Guatemala Opposed, Washington Post, Oct. 16, 1987, at A40; Fruit Fly Border War, Christian Sci. Monitor, July 21, 1987, at 7; U.S. Medfly Plan in Guatemala Draws Fire, Boston Globe, July 12, 1987, at 19; Grounding the Medfly Warriors: Lawmakers Protest Use of Banned Pesticide in Guatemala Project, May 29, 1987, at A23; USDA Backs Use of Carcinogen in U.N. Battle With Medflies: Guatemala Would Use Pesticide Banned in United States, Washington Post, Apr. 15, 1987, at A3.

[14] Consortium for International Crop Protection & U.S. Agency for International Development, Guatemala Medfly Environmental Impact Analysis (July 1988).

The EIA further elaborates the "potentially serious health problems for workers" from a lack of availability and use of safety equipment, such as masks. The inaccessibility of or failure to apply safety precautions led to major declines in cholinesterase levels -- an indication of pesticide poisoning -- in six of fifteen exposed workers.

A.I.D.'s analysis documents that MOSCAMED presents serious health risks to the general population in Guatemala. Although only the supposedly low toxicity d-phenothrin was to be used to fumigate vehicles passing through quarantine stations, the EIA demonstrates that in fact the far more toxic pesticides dichlorvos and propoxur were applied. Dichlorvos is a potent, documented carcinogen -- comparable in cancer-causing capacity to EDB, which was eliminated from the program -- with risks among the most extreme ever identified by EPA.

Moreover, the EIA demonstrates that the benefits to Guatemala of this massive project are trivial or nonexistent. As noted in the EIA, despite the fact that Costa Rica is infested with medfly and has no organized effort to eradicate the pest, that country still has coffee yields per hectare that are more than double those of Guatemala. Moreover, the supposed benefits to the economy of Guatemala from increased exports to the United States are totally illusory. The EIA clearly states that, even after eradication, exports of many economically significant crops

to the United States would still be impossible because of the severe infestation of Anastrepha -- another pest -- in Guatemala.

Lastly, the EIA demonstrates that there are few if any benefits to the United States of this costly program. To the contrary, the EIA shows that the proposed expansion of MOSCAMED would be a profound waste of the taxpayers' money. The EIA clearly states that "eradicating the pest in Guatemala, and for that matter all of Mexico and Central America, will not eliminate the threat of the insect entering the U.S."

According to the EIA, slightly more than 1% of all the medflies intercepted at ports in the continental United States originate in Guatemala. By contrast, medflies are more than fifteen times as likely to come from Hawaii, where a strikingly similar project was halted because of serious environmental concerns. According to the EIA, there are no fewer than ten foreign jurisdictions from which medflies are more likely to arrive in the United States than from Guatemala, and two of these -- Italy and Portugal -- are more than ten times as likely as Guatemala to export their pest problems to the United States.

Mr. Chairman, the point of this story is that a minimal environmental analysis of MOSCAMED was not completed until the project had already been underway for at least six years. Even then, massive interventions from the public and the Congress were

required before the EIA was undertaken. When the document was finally completed it described shocking abuses, the potential for which should have been identified before the project was begun so that they could have been prevented. In addition, the analysis clearly showed that, entirely apart from the environmental risks associated with MOSCAMED, the project was wasteful and unnecessary.

There have recently been indications that pesticide use in MOSCAMED will be seriously curtailed or eliminated altogether. However, the Executive Branch agencies concerned do not appear to have learned any larger lessons from the painful experience of MOSCAMED. USDA throughout the process protested -- and to the best of my knowledge continues to protest -- that no environmental study was necessary. Even A.I.D. -- whose regulations for analyzing impacts abroad[11] predate the 1979 executive order and are generally regarded as the most comprehensive of any federal agency -- continues to assert that its "environmental impact analysis" of MOSCAMED was not required by NEPA or its own regulations and was performed as an entirely discretionary matter.

Although MOSCAMED is the only case study we have examined in detail, there is a widespread feeling that this example is merely

---

[11] 22 C.F.R. § 216.

the tip of the iceberg. For example, the United States has a massive program of drug eradication abroad using dangerous chemical herbicides. These programs receive only the most cursory analysis. During my tenure at the State Department, drug eradication projects were the subject of CERs of highly questionable quality performed pursuant to the 1979 executive order. These reviews were routinely churned out by consultants without, to my knowledge, any visits to the country in question.

MOSCAMED and other examples demonstrate the urgency of clearly establishing that the environmental impacts abroad of activities undertaken abroad require the strict application of the procedural and substantive guarantees of NEPA and the CEQ regulations. The kind of analysis performed in the case of MOSCAMED should be the norm, not the exception, and should be completed before proposed actions are implemented. However, without legislative action we will continue to see horror stories like this one. For this reason, we strongly support the portions of H.R. 1113 that would clarify that NEPA and the CEQ regulations apply with full force to environmental impacts occurring abroad.

Mr. Chairman, this concludes my prepared statement. I will be happy to answer any questions you may have.

FRIENDS OF THE EARTH

TESTIMONY OF THE N.W. OFFICE
FRIENDS OF THE EARTH

submitted to the

SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION
AND THE ENVIRONMENT
COMMITTEE ON MERCHANT MARINE & FISHERIES

U.S. HOUSE OF REPRESENTATIVES

on

H.R. 1113

Washington D.C.
7 March 1989

Northwest office 4512 University Way NE Seattle, Washington 98105 (206) 633-1661

My name is David E. Ortman, Northwest Representative for Friends of the Earth, 4512 University Way N.E., Seattle, WA 98105. Friends of the Earth is a national environmental organization which has recently affiliated with the Environmental Policy Institute and the Oceanic Society. In addition, Friends of the Earth is the U.S. representative to Friends of the Earth International (FOEI) which has 33 member groups in foreign countries, including many on the Pacific Rim (Australia, Canada, Hong Kong, Japan, Malaysia, Mexico, New Zealand, and Nicaragua)

I would request that the attached paper on "Pacific Rim Trade and the Environment" be included in the hearing record. Friends of the Earth is concerned that despite new information about the vulnerability of our planet to environmental problems, little or no thought is going toward addressing the environmental impacts of trade and trade issues.

Executive Order 12114 issued by President Carter in 1979 required federal agencies to consider international environmental impacts of their actions. However, the order did not require federal agencies to follow NEPA procedures or to prepare environmental impact statements. E.O. 12114 does not appear to speak specifically to the environmental impacts of international trade.

We would strongly urge the Subcommittee to make foreign trade policies and foreign trade agreements subject to NEPA.

Thank you for the opportunity to submit these comments.

PACIFIC RIM TRADE AND THE ENVIRONMENT

by David E. Ortman
Northwest Representative
N.W. Office, Friends of the Earth
4512 University Way N.E.
Seattle, WA 98105

According to a new World Resources Institute report, the U.S. " . . .is now the world's largest exporter and importer of both raw materials and manufactured goods, the largest overseas investor, and the largest international debtor as well as the largest creditor; and the dollar remains the primary reserve currency."

It is no wonder that trade issues have increasingly captured the attention of decisionmakers at the national and state level. Economic linkages are now recognized as either opportunities or threats to our nation's security.

The Seattle P-I (2 May 1986) carried an article which began, "Exports from West Coast ports are booming. . ." Further in the article it reports, " . . .the biggest share of the exports coming out of Seattle and other West Coast cities is raw materials. . ."

What makes up the Pacific Rim trade? Such things as crude oil, fish, logs, wood chips and pulp, coal, and minerals. The basics for international trade have been viewed by the U.S. and our international trading partners as exploitable natural resources.

Example: In the heart of New Zealand's North Island is the world's largest plantation forest. "Our whole logging technique in the post-war period is based on the Pacific Northwest," said A.W. Grayburn, manager of N.Z. Forest Product's forestry resources division. (Seattle Times, 11 May 1986).

Example: Australia sells sand to Saudi Arabia. . .The sand in Saudi Arabia isn't suitable for making concrete, and Australia's is perfect. Natural resources, including such things as iron, timber, gold and land (not to mention sand), are Australia's secret of economic survival. The nation lives off its land, exporting resources to the world. (Seattle Times, 11 May 1986)

Example: In the deep interior of Sarawak (Malaysia) tropical forests, thousands of indigenous people have formed human barricades across logging tracks in a bid to stop the destruction of their lands by timber companies. (The Sunday Star, Malaysia, 14 June 1987).

Example: As a report by the National Academy of Sciences notes, "More than 10 percent of the land area of the earth is now under cultivation. More than 30 percent is under active management for purposes of mankind." (Christian Science Monitor, 31 March 1987)

Trade policy today is focused on trade deficits, not environmental degradation; on trade protectionism, not environmental protection; and on national security, not on ecological security for spaceship earth.

Isn't it time we step back and ask about the relationship of international trade and our global environment?

The World Resources Institute report: "NOT FAR AFIELD: U.S. Interests and the Global Environment" (by Norman Myers, June 1987) expands on the notion of what is the U.S. National Interest in the global economy. The traditional values have been a) the integrity of the sovereign state; b) democratic traditions; c) economic freedom; and d) institutional latitude.

"To these long-established goals, this study argues, we now need to add a further one that complements and reinforces the others. It is safeguarding the global environment, thereby promoting sustainable development throughout the world, especially in the Third World, to foster those economic and political process that will assure a secure natural-resource base for all. This additional goal will help maintain stability in international relations, at a time when environmental degradation and resource depletion increasingly threaten the orderly conduct of international affairs."

Despite efforts by the United Nations Environment Programme, The Club of Rome reports, and the Carter Administration's Global 2000 report, the recognition of ecological linkages has yet to penetrate policies and discussions on trade and competitiveness.

According to a report in Science (5 October 1984), ". . .issues such as ozone depletion, carbon dioxide buildup, and now acid rain have dramatized the need for a truly global program. Humans are beginning to perturb the climate and the biosphere on a planetary scale, and yet there are enormous gaps in our knowledge of the system: governments have been faced with making expensive and controversial policy decisions on the basis of scientific guesswork."

The Catholic bishops of the Philippines, for example, approved in January of 1988 a pastoral letter titled "What is Happening to Our Beatiful Land?". The bishops, asserting that ecology is "the ultimate prolife issue" point out that the ecological crisis "lies at the root of many of our economic and political problems. To put it simply our country is in peril. All living systems on land and in the seas around us are being ruthlessly exploited. The damage to date is extensive and, sad to say, it is often irreversible."

And the beat goes on. "Resources" are extracted, causing local environmental impacts which contribute to cumulative regional problems. These raw commodities are then shipped (sometimes more than once) across the Pacific at an ever increasing energy cost. The manufacturing and labor conversion into finished products produces environmental pollution at a new source, again contributing to cumulative problems in a different spoke on the rim.

This frenzy of global trade is imparting some wobbles into the orderly workings of spaceship earth. According to the World Resources Institute among these wobbles include:

- Loss of agricultural land. Mexico and the Phillippines, both food exporters in the mid-1970s, have recently become net importers - the results of a declining agricultural resource base and rapid population growth, together with faulty government policies.

- Mass extinction of species. By the year 2000, we may lose as many as 1 million of Earth's 5-10 million species, and a good many more during the next decades.

• Tropical deforestation. The Panama-U.S. Joint Commission on the Environment report of 5 August 1987 states that Panama is so concerned about deforesting the Panama Canal's watershed, that a five-year nationwide tree cutting ban has been issued.

• The marine realm. We have seen how how Secretary of Interior Hodel has opened up the entire Washington and Oregon Coast for oil and gas drilling. Coastal refineries, offshore oil rigs, and supertankers now spill more than 100 million barrels of oil into its waters each year. Overexploitation of fishery resources is another marine concern. A 1986 NOAA study of federal marine fisheries management identified 19 groups of finfish and shell fish that were being overfished as recently as 1986. Pacific species include chinook and coho salmon, Pacific ocean perch, red king and C. bairdi Tanner crab, and seamount groundfish.

• Freshwater shortages. It is ironic that Seattle, WA is now discovering what Denver and Phoenix have been denying for a century - freshwater is a limiting factor. Imagine the difficulties if your water is not only limited, but unhealthy for drinking, as well.

• Energy shortages. Every country, including the U.S., has a de facto energy policy: Use as much as possible, of everything possible, for as long as possible. The lesser developed countries fuelwood shortage is acute and growing.

• Air pollution. Secretary of Interior Hodel became a worldwide laughing stock for his alternative of sticking our head in the sand concerning ozone depletion. While the State Department has signed a protocol to the Vienna Convention for the Protection of the Ozone Layer, other global air problems, including long range transport of pollutants and acid rain remain under an Administration inversion.

• Climate change. Carbon Dioxide buildup and other "greenhouse gases" will accelerate global warming. Perhaps our grandchildren will have to learn how to sell iceboxes to eskimos.

The World Resource Institute warns that, "No nation can shield itself from various forms of environmental degradation in other nations." They recommend five major global transitions:

1. An economic transition toward sustainable development, together with an equitable distribution of benefits.

2. A natural-resource transition, from depletion of nature's "capital" to reliance on its "income."

3. A demographic transition toward early stablization of population growth.

4. An energy transition, from an oil-dominated era to an energy future based on renewable sources and high efficiency of production and consumption.

5. A political transition toward a global bargain of complementary concerns between North and South.

As Michael McCloskey, Sierra Club Chairman, has warned, however, ". . .not a lot has yet been demonstrated about sustainability in a modern, industrial context. 'Sustainability' is still more a slogan - a bit of 'pasting new labels on old bottles' - than a proven body of theory and practice ready to be applied, and most of the development impulse now abroad is not working for anything that can be called sustainable."

It is time that the National Environmental Policy Act be applied to trade policies. The purpose of NEPA is to declare a national policy which will encourage productive and enjoyable harmony between people and their environment. On a global basis, the NEPA requirements for a detailed statement on trade policies and

> (iv) the relationship between local short-term uses of man's environment and maintenance and enhancement of long-term productivity, and
> (v) any irreversible and irretrievable commitments of resources which would be involved

are desperately needed. The Earth needs more friends.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, NW.
WASHINGTON, DC 20503

March 8, 1989

The Honorable Gerry E. Studds
United States Congressman
United States House of Representatives
1334 Longworth House Office Building
Washington, D.C. 20515-6230

Dear Congressman Studds:

At yesterday's hearing on the reauthorization of the Office of Environmental Quality, you requested information regarding the environmental documentation necessary for the restart of the Pilgrim nuclear power plant in Massachusetts. A member of my staff has contacted the Nuclear Regulatory Commission (NRC) to determine the status of this matter.

After discussions with an NRC representative, and a member of your personal staff, it is apparent that there is some disagreement as to what, if any, actions NRC has taken with respect to the restart of the facility which would necessitate compliance with the National Environmental Policy Act. We will continue to address this matter with NRC, and will keep your staff informed of our findings.

Sincerely,

A. Alan Hill

A. Alan Hill
Chairman

Natural Resources
Defense Council

1350 New York Ave., N.W.
Washington, DC 20005
202 783-7800

March 9, 1989

The Honorable Gerry E. Studds, Chairman
Subcommittee on Fisheries and Wildlife Conservation and the Environment
House Committee on Merchant Marine and Fisheries
1334 Longworth House Office Building
Washington, DC 20515-6230

Attention: William W. Stelle, Jr.

Dear Mr. Chairman:

Thank you once again for the opportunity to testify at the hearing you chaired on the international application of the National Environmental Policy Act (NEPA) on March 7.

I am providing a supplemental response to your question concerning categories of federal actions other than those identified in my testimony that would benefit from the application of NEPA, which include the following:

Exports of hazardous wastes, pesticides, and industrial chemicals. These hazardous exports can have profound effects in the importing country. The World Health Organization estimates that pesticides kill 5000 to 20,000 people a year and poison a total of approximately a million, most of them in the developing world. A recent explosion in the number and amount of shipments of hazardous wastes to the developing world has focussed increased public attention on the environmental hazards associated with exported toxic garbage. Many developing countries simply do not have the regulatory infrastructure to prevent the entry of undesired commodities into their territories or to control the impacts of hazardous substances.

Under section 3017 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6938, the government of a country identified as a potential recipient must consent to receipt of shipments of hazardous wastes before those shipments may commence. The Environmental Protection Agency (EPA), after receiving information from the exporter, transmits a projection of anticipated shipments over a period of up to twelve months and requests the consent of the government of the country of import. The notice summarizes the United States regulatory requirements that would apply to the treatment, storage, and disposal of the wastes. A multilateral convention currently being negotiated under the auspices of the United Nations Environment Program (UNEP) would require in addition shipments be terminated where

New York Office:
122 East 42nd Street
New York, New York 10168
212 949-0049

Western Office:
90 New Montgomery
San Francisco, CA 94105
415 777-0220

New England Office:
850 Boston Post Road
Sudbury, MA 01776
617 443-6300

Toxic Substances
Information Line:
USA: 1-800 648-NRDC
NYS: 212 687-6862

there is reason to believe that they will not be managed in the importing country in an environmentally sound manner.

Section 17 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136o, and section 12 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2611, require notices of export, but no prior consent. However, a recent set of UNEP recommendations that have been supported by the United States establish a modified consent principle for exported pesticides and industrial chemicals.

No environmental impact statements or other NEPA documents are prepared in connection with notices of impending shipments of hazardous wastes or domestically banned or regulated chemicals and pesticides. The reason presumably is that transmitting a notification to a foreign government is not considered a "major federal action" within the meaning of NEPA or the 1979 executive order. However, the NEPA process can and should be applied before shipments can commence.

Exports of pharmaceuticals. A licensing process for exports of pharmaceuticals unapproved for use in the United States recently went into effect. Exports of drugs not approved in the United States previously were totally prohibited. However, the Drug Export Amendments Act of 1986, 21 U.S.C. § 382, now permits the shipment of an unapproved pharmaceutical to twenty-one industrialized countries, provided the country of import has approved the drug for use, after the grant of an export application.

Environmental impact statements designed to analyze the effects of proposed shipments on health and the environment in the country of import could and should be incorporated into this approval process. However, the Food and Drug Administration, which approves the export applications under the new law, does not and has no plans to apply NEPA to this process, which is exempt under the 1979 executive order.

Nuclear exports. The Nuclear Non-proliferation Act, 22 U.S.C. §§ 3201-3282, and the Atomic Energy Act, 42 U.S.C. §§ 2011-2296, require approval of an export application preceding shipments by a private party of certain nuclear materials, equipment, and technologies from the United States. Although the principal purpose of these controls is not to protect health and the environment, the export licensing process provides an obvious opportunity for the application of NEPA procedures. In practice, however, the 1979 executive order is applied to these transactions and no significant evaluation of environmental impacts in the recipient country is conducted.

Activities of federally-supported financial institutions. United States government agencies such as the Export-Import Bank

and the Overseas Private Investment Corporation underwrite transfers of hazardous substances and technologies to developing nations. Their overseas activities are currently subject to the 1979 executive order, which again assures that no significant evaluation of environmental impacts in the recipient country is conducted.

* * *

I hope I have adequately answered your question. I urge you once again to assure that the full procedural and substantive guarantees of NEPA apply to these actions as well as to the categories of actions identified in my prepared testimony.

Cordially,

David A. Wirth

David A. Wirth
Senior Attorney

STATEMENT OF LARRY WILLIAMS

DIRECTOR, INTERNATIONAL PROGRAM

SIERRA CLUB

BEFORE THE HOUSE SUBCOMMITTEE ON FISHERIES & WILDLIFE CONSERVATION

AND THE ENVIRONMENT

COMMITTEE ON MERCHANT MARINE & FISHERIES

REGARDING H.R. 1113, U.S. INTERNATIONAL ACTIVITIES AND

COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

MARCH 8, 1989

We are pleased that this subcommittee is considering an amendment to the Office of Environmental Quality Reauthorization legislation which would require federal agencies to comply with the National Environmental Policy Act (NEPA) when that agency undertakes activities which affect other countries, such as grant-making, consultation and policy making.

There are actually two questions that need to be addressed regarding NEPA applicability to foreign activities of our government:

(1) Should federal agencies be obliged to comply with the requirements of NEPA when working abroad? We believe that the Congress intended NEPA to apply to overseas activities of the government. However, the intention has never been properly interpreted by the courts or the Executive Branch. This failing can easily be resolved with the Subcommittee's proposed amendment which we fully support; and,

(2) Should the Congress give special consideration to the Treasury Department's deciding role in casting the U.S. votes on the Board of Executive Directors of the multilateral development banks (MDBs)? We believe that the Congress should require the preparation and public circulation of an

environmental impact analysis (EIA) prior to casting the U.S. vote on proposed MDB projects. I will return to this issue later in my statement.

History of NEPA abroad:

I would like to first address the question of whether or not all federal activities that effect the quality of the human environment outside the boundaries of the U.S. are presently covered under NEPA. We plan to show that the extraterritorial amendment proposed by this Subcommittee serves to clarify what the Congress originally intended with the law in 1969.

As this Subcommittee is well aware, since the passage of NEPA[1], virtually all federal agencies have restructured their decision-making process in order to avert unintended injury to nature and man within the territorial jurisdiction of the United States.[2] But what restructuring has occurred with U.S. activities outside our borders? NEPA expressly states that its purposes include the promotion of "efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man..."[3] It should be clear to all that the "biosphere" embraces all living organisms, including man, whether found on the solid earth, in the waters, or in the atmosphere of our planet.[4] In the Declaration of National Environmental Policy, the Congress gave explicit recognition to "the profound impact of man's activity on the interrelations of all components of the natural environment" and declared it to be the

---

[1] National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190, 83 Stat. 852, 42 U.S. C. § 4321-74 (1970).

[2] Robinson, Extraterritorial Environmental Protection Obligations of Foreign Affairs Agencies: The Unfulfilled Mandate of NEPA, 7 N.Y.U. J. Int'l L. & Pol. 257,266 (1974) [hereinafter "Robinson"]

[3] NEPA § 2,42 U.S.C. § 4321 (1970).

[4] Webster's Third New International Dictionary (unabridged) (1968) defines "biosphere" as follows:
1. The part of the world in which life can exist including parts of the lithosphere, hydrosphere and atmosphere. 2. Living beings together with their environment.

continuing policy of the Federal Government ...to use all practicable means...to create and maintain conditions under which man and nature can exist in productive harmony...[5]

There is nothing in the Act to indicate that the federal government must be restricted to environmental impacts of its actions within the United States. NEPA states that "all agencies of the Federal Government shall"[6] act to protect the biosphere.

Sierra Club v. Atomic Energy Commission

In 1974, the Sierra Club brought suit against the Atomic Energy Commission (AEC)[7] "to compel the Atomic Energy Commission, Eximbank, and the State Department to file a NEPA impact statement with respect to an export program under which the U.S. would sell nuclear power generating systems and enriched nuclear fuels to other countries".[8] After the suit was initiated, the AEC decided to prepare a NEPA statement on the nuclear power export process. The AEC then joined the State Department in recognizing NEPA's applicability to its activities. The Court expressed recognition of NEPA's all-inclusive mandate by declaring that "NEPA makes no exceptions in directing 'all agencies of the Federal government' to comply with its provisions".[9]

Sierra Club v. Department of Transportation

Another suit I want to mention concerned Sierra Club v. the Department of Transportation (DOT).[10] The issue was over the need for DOT to write an

---

[5] NEPA § 101(a), 42 U.S.C. § 4331 (a) (1970).

[6] NEPA § 102 (2), 42 U.S.C. § 4332 (2) (1970).

[7] Sierra Club v. Atomic Energy Commission, No. 1867-73 (D.D.C. August 3, 1974).

[8] ibid, Robinson.

[9] Civil No. 1867-73.

[10] Sierra Club .v Coleman, 405 F. Supp. 53, 421 F. Supp. 63, D.C. District Court 1975. Sierra Club v. Adams, 578 F. 2b 389 (D.C. Circuit Court 1987).

environmental impact statement (EIS) prior to constructing a link of the Inter-American Highway between Panama and Colombia through the Darien Gap. This project was authorized in an amendment to the Federal Aid Highway Act of 1970 which directed the Secretary of DOT to cooperate with Panama and Colombia in the construction of the highway "in the location known as the 'Darien Gap'".[11] In that case, the Sierra Club held that the construction of the highway through the Darien Gap would lead to uncontrolled destruction of the tropical forest. Immigration and colonization would result in an area which would be ill suited for conventional farming, grazing of livestock, and human habitation due to the very poor soils. The result would be "severe and soon devastating effects" of an exceptional rain forest known for its richness of flora and fauna. The ultimate result would be the destruction of the Cuna and Choco Indians' way of life "who maintain a precarious existence in upper valleys of rivers in the Darien area".[12] As a result of this legal action, the DOT proceeded with the preparation of an EIS for the Darien Gap.

We believe that a strong case can be made that NEPA does indeed apply to U.S. agencies' activities outside the U.S. which have a major impact on the quality of the human environment. We now have almost twenty years of experience with the requirements of NEPA. We believe the law works very well. In fact, the NEPA process works so well that many other countries have adopted, or are considering the adoption of, an environmental assessment process much like ours. When I attended a meeting in Paris last fall of the Environment Committee of the Organization of Economic Cooperation and Development (OECD), I was very surprised to hear how accepted our environmental assessment process had become. At this meeting, the representatives of the OECD member countries and representatives of the lesser developed countries were discussing how to put the environmental assessment process to work when designing development assistance projects for the Third World. To

---

[11] 23 U.S.C. § 216 (a) (1970).

[12] Letter from H.A. Lindberg, Assoc. Adm'r for Engineering and Traffic Operations, Dept of Transp., to Leonard C. Meeker, Center for Law and Social Policy, Washington, D.C., Oct. 9, 1974.

my astonishment, a majority of the First and Third World representatives agreed that not only would the environmental assessment process be helpful and was needed, but that the Scoping process should also be included as an important part of the process! (I was spared a great embarrassment by not jumping into this discussion early on to explain what Scoping is.)

The Congress, through NEPA and the Multilateral Investment Guarantee Agency (MIGA)[13] legislation of last year, has already stated that we must take a greater responsibility for our activities which occur outside our national boundaries. To date, the message has not been clearly understood. It is time that the Congress makes it clear that NEPA applies to all federal agencies' actions which have a major impact on the human environment.

Professor Nicholas Robinson's article entitled, "Extraterritorial Environmental Protection Obligations of Foreign Affairs Agencies: The Unfulfilled Mandate of NEPA", sums up this issue very well:

> In the final analysis, the issue of how foreign affairs agencies comply with NEPA does not involve interference in the affairs of other nations. Rather, the aim is to assure that the United States itself is never responsible for unanticipated environmental injury anywhere. NEPA provides a restraint on U.S. action, not on the actions of other countries. How to assess environmental impact abroad may itself raise legitimate questions of methodology, but not of purpose. The goal of NEPA must be uniform if its scientific bases is to be given effect; the activities of federal agencies must be carried out only with as full an awareness as possible of their impact on the systems of the biosphere. Eventually, the foreign affairs agencies may come to appreciate this teaching.[14]

Recall that it is the policy of the federal government under NEPA to "prevent or eliminate damage to the environment and biosphere". What then could be more appropriate and timely on NEPA's 20th anniversary than for the Congress to reassert those policies as stated in the National Environmental

---

[13] H.R. 3750, the Multilateral Investment Guarantee Agency, adopted in the FY 1988 Continuing Resolution, (H.J.R. 395), December 1987.

[14] Robinson

Policy Act which would recognize that many of the international activities of the United States, both directly and indirectly, effect "the health and welfare of man...."[15]

We urge the Congress to make it clear that all federal overseas activities which have a major impact on the environment should fall under the requirements of NEPA by adopting the Subcommittee's proposed language.

Background: Environmental Organizations, Department of Treasury, and the MDBs

I would now like to turn to the second issue concerning the Treasury Department's vote on the funding of multilateral development bank development projects. It might be helpful to start by giving the Subcommittee some background information regarding our involvement in the MDB development issue. I hope that this will provide a better understanding of our relationship with Treasury regarding the MDBs.

For the last five years, the Sierra Club has been working with four other national conservation organizations (i.e. National Wildlife Federation, Natural Resources Defense Council, Environmental Defense Fund and the Environmental Policy Institute) in a joint effort to reform the lending practices of the MDBs. It is the aim of our organizations to ensure that MDB funded development loans are environmentally sustainable and do not cause undue harm to the natural resource base of the developing countries.

In December 1984, at the conclusion of many months of hearings on the environmental and social impacts of the MDBs, the House Subcommittee on International Development Institutions and Finance, Committee on Banking, Finance and Urban Affairs adopted a set of recommendations to the U.S. Treasury Department. The recommendations directed Treasury to press the MDBs to instigate major reforms in their lending practices. The recommendations

---

[15] NEPA S 2, 42 U.S.C. § 4321 (1970).

called for a permanent Treasury Department staff person "to monitor environmental aspects of bank activities, to facilitate constructive U.S. involvement in assuring that sound environmental policies are implemented by multilateral lending agencies supported by the U.S., and to expedite the flow of information between the banks and U.S. Congress, other relevant federal agencies, and the public regarding environmental consideration"." The recommendations also called for increased environmental staffing within the banks, and consultation with environmental ministries and non-governmental organizations within the borrower countries. Lastly, the recommendations called for the establishment of criteria upon which the U.S. could judge the environmental and social implications of proposed Bank projects prior to the U.S. vote being cast for a major project which would effect the quality of the environment.

In subsequent years, the Foreign Operations Subcommittee of the Appropriations Committee has incorporated its own version of the House Banking Subcommittee recommendations into its yearly funding bill. The next step came in 1987, when the Congress adopted the MIGA legislation, which put into law many of the reforms called for in the 1984 recommendations of the House Banking Subcommittee and the yearly appropriations bills. Prior to passage of the MIGA legislation, the Treasury Department and representatives of the five environmental organizations worked closely with members of the Congress to ensure that the final language relating to the environmental performance of the MDBs was acceptable to all parties. I have attached a copy of Title XIII, "The Environment" of MIGA, to my statement. I would like to call this Subcommittee's attention to Section 1303 in this title:

> Sec. 1303. (a)(1) In the course of reviewing assistance proposals of the multilateral development banks, the Administrator of the Agency for International Development, in consultation with the Secretary of the Treasury and the Secretary of State, shall ensure that other agencies and appropriate

---

[18] Recommendations of the U.S. House of Representatives Subcommittee on Int'l. Development Inst. and Finance, Committee on Banking, Finance and Urban Affairs, December 1984, #2.

8

United States embassies and overseas missions of the Agency for International Development are instructed to analyze, where feasible, the environmental impacts of multilateral development loans well in advance of such loans' approval by the relevant institutions to determine whether the proposals will contribute to the sustainable development of the borrowing country.

(2) To the extent possible, such reviews shall address the economic viability of the project, adverse impacts on the environment, natural resources, public health, and indigenous peoples, and recommendations as to measures, including alternatives, that could eliminate or mitigate adverse impacts.

(3) If there is reason to believe that any such loan is particularly likely to have substantial adverse impacts, the Administrator of the Agency for International Development, in consultation with the Secretary of the Treasury and the Secretary of State, shall ensure that an affirmative investigation of such impacts is undertaken in consultation with relevant Federal agencies. If not classified under the national security system of classification, the information collected pursuant to this paragraph shall be made available to the public.

MDB Project Information Availability and the Early Warning System

Through MIGA, the Congress has already instructed the Treasury Department to carry out an environmental analysis of each MDB project which might have a major effect on the environment, public health and/or indigenous peoples. Treasury, however, has no reliable means of obtaining timely information concerning the probable environmental impacts of proposed Bank projects directly from the MDBs prior to the time the project comes before the Board of Executive Directors. Therefore, the Treasury Department relies on U.S. AID's Early Project Notification System, which has its extensive network of missions, as an early warning system for MDB projects. The Early Warning System is a cooperative system for tracking proposed MDB projects through AID's missions located in the developing world and through embassies where there is no AID mission. Sadly, this is the primary means our government has of gathering advance information on MDB projects so that the U.S. can cast an informed vote on the Board of Executive Directors.

The Early Warning System is very useful, but it has its limitations. I discussed the Early Warning System with the staff of AID missions in Rwanda, Kenya, Sudan, Botswana and the Ivory Coast during my travels in Africa this past year. I heard universal complaints from mission staff that they frequently did not hear of pending projects until they were well into the planning process. The staff also complained that they often did not have the time or the means to properly evaluate proposed MDB projects.

If further investigation of a project seems warranted, Treasury and AID, with the help of State, will approach the Bank that is working on the project proposal. Additional information and documents which might help in the evaluation process are then cajoled out of the officials. All too often, the MDB will respond by telling the U.S. government that the information cannot be released because it is privileged information between the donor government and the Bank. Our government then has two options. Our representatives to the Banks must either try to learn more about the project in advance by going through the back door of the MDB and to NGO representatives here and abroad, or wait for the loan documents when the loan goes before the Bank's Board of Executive Directors for approval.

The disadvantage of waiting until the loan goes to the Board for approval is that the executive directors receive the project appraisal reports only two weeks prior to the vote. In theory, the executive directors review each project and determine whether or not it merits financing. In practice, however, most executive directors do not have the staff or resources necessary to examine the project files for problems, criticism, or data that are omitted from the Staff Appraisal Reports. The Board of Executive Directors, therefore, often functions as a rubber stamp. Most executive directors have standing instructions from their countries to vote for all projects unless specific instructions are given to the contrary. Since the time lap is only two weeks between receiving the loan documents and casting a vote, it is almost impossible for the executive directors to get the information to their countries in sufficient time for all the documents to be reviewed. The environmental problems associated with a proposed project should be openly

critiqued and resolved by all concerned well in advance of the Board's vote.

The difficulty in obtaining MDB project documents is well illustrated from a recent personal experience. The Sierra Club and the Natural Resources Defense Council were recently invited by the government of Botswana to visit that country to examine the environmental effects of the World Bank funded livestock project. It is a project which we have criticized. Prior to my departure, the Treasury Department and AID tried to obtain a copy of a World Bank funded economic study on livestock grazing in Botswana.[17] This report would have been very useful as a reference prior to our trip. Predictably, all the might of the U.S. Government could not dislodge a copy of this report from the firm grip of the World Bank. The Bank claimed that the Government of Botswana would not allow them to release this document. When I told the Botswana Minister of Local Government and Land, P.K Balopi, about the difficulty our government was having in obtaining a copy of this study, he let out a big laugh as if that was the funniest story he had ever heard. He said we were welcome to have a copy of the document along with any other final MDB document pertaining to Botswana. As a result, Minister Balopi recently signed a letter of agreement between his Ministry, the Sierra Club and the Natural Resources Defense Council, which includes the following clause:

> Botswana is perfectly happy for NRDC and the Sierra Club and other organizations of similar concern to be given copies of final reports that have been accepted by Botswana Government in relation to projects, studies and policies. We are also willing to reassure donors that such reports can be supplied by them for public release.[18]

Since this time, the World Bank has done absolutely NOTHING to comply with the Government of Botswana's request! A World Bank official reasoned to us that this lack of response was due to the fact that the request came from the Minister of Natural Resources and not the Minister of Finances and thus

---

[17] National Land Management and Livestock Project - Incentives/Disincentives Study, Vols. I-III, McCowan International and Coopers & Lybrand, October 1987, Gaborone, Botswana.

[18] Letter to Mr. Larry Williams, Sierra Club and Mr. David Wirth, Natural Resources Defense Council from Minister P.K. Balopi, Ministry of Local Government and Lands, Gaborone, Botswana, April 28, 1988.

the Bank is not obliged to pay any attention to the request. This stance completely ignores the fact that the resolution to the World Bank was adopted by the Cabinet of Botswana! I don't believe a more compelling case needs to be presented as to why the Congress must get tough with the Banks in insisting on the disclosure of pertinent environmental information on proposed Bank projects. It is clear that the MDBs are not going to take the initiative themselves.

Under the current arrangement, the Treasury Department is being asked to evaluate and cast informed votes on some 300 MDB projects a year. These votes are based on project lending documents which are only briefly available prior to the vote in addition to whatever information Treasury and State can come up with through the AID missions or the non-governmental organizations. What has resulted is an information gathering system where major decisions are based on very little available information. Much more extensive, complete and timely information is needed by all of the donor countries given the huge impact these Bank projects have on people's lives and the natural resources of the Third World.

Recommendation

Clearly, more complete and punctual information is needed on the environmental and social impacts of MDB projects well in advance of the funding decision process. It is also clear that the U.S. Treasury Department should not be exempt from analyzing the environmental consequences of MDB projects prior to voting of proposed MDB projects. The major question is: how can Treasury comply with the requirements of NEPA given that MDB projects are located all over the Third World?

It is not our desire to require Treasury to write 200 environmental impact statements a year. Treasury could never be expected to have the staff resources to develop its own EIS for each vote. The Banks and borrower countries are the only logical source for the needed environmental information. It is our recommendation that the Treasury Department be directed to provide an <u>environmental assessment</u> (not an EIS as required by NEPA) prior to voting on MDB projects which appear to have a major impact on

the environment. Furthermore, the Treasury should be barred from voting for a project unless the necessary information is provided.

It is clear that Treasury cannot prepare such a document without the help of the Banks and the borrower countries. It is also clear that the MDBs will not want to see the U.S. restricted from participating in the decision making process. It is our opinion that the MDBs cannot afford to allow such a situation to develop which could possibly result in the U.S. dropping out of full participation on the Board of Executive Directors.

We do not think it is realistic to ask Treasury to file a draft and final EIS. Nor is it realistic for Treasury to be obliged to comply with many of the other aspects of NEPA and the CEQ regulations which were designed for agencies which are more directly involved in the activities under consideration.

We suggest that the Congress amend Section 203 (the Office of Environmental Quality) of the Environmental Quality Improvement Act of 1970[9] by directing the Council on Environmental Quality to establish an environmental assessment process for the Treasury Department to follow prior to voting on MDB funded development projects (within one year after the passage of this act).

We are confident that the information provided through this assessment process will be utilized by the people directly affected by the proposed projects, the other MDB donor nations, and all of us who are concerned about the adverse environmental impacts the First World is having on the Third World.

---

[9] Pub.L. 91-224, 42 U.S.C. 4371-4374, April 3, 1970.

In conclusion, we also urge this Subcommittee to place into law the 1977 Executive Order[20] directing CEQ to develop regulations for federal agencies to follow in implementing the provisions of NEPA. This important Executive Order should not be left to the whims of present or future administrations to choose to abide, repeal, or alter in ways that might undermine the integrity of the NEPA process.

---

[20] Executive Order 11514, as amended by EO 11991 (Secs. 2(g) and 3(h)), May, 1977, Protection and Enhancement of Environmental Quality

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 11 1989

OFFICE OF
EXTERNAL AFFAIRS

Honorable Gerald Studds
Chairman
Subcommittee on Fisheries and Wildlife
Conservation and the Environment
Committee on Merchant Marine and Fisheries
House of Representatives
Washington, D. C. 20515

Dear Chairman Studds:

I appreciated the opportunity to testify on the usefulness and value of the National Environmental Policy Act (NEPA) before your Subcommittee on March 7, and am pleased to provide the additional information we discussed at the hearing.

Enclosed is a copy of the June 16, 1988 testimony presented by R. Augustus Edwards III, Deputy Assistant Administrator for External Affairs, before the Senate Subcommittee on Hazardous Wastes and Toxic Substances, Committee on Environment and Public Works. This testimony provides the detailed EPA comments on last year's proposal by Senator Symms to apply NEPA to the actions of U.S. officials in the multilateral lending institutions. Also enclosed is my letter to the Senate Environment and Public Works Committee concerning that legislation.

Also enclosed is a copy of EPA's February 2, 1989 letter to the Council on Environmental Quality referring the action of the Bureau of Reclamation regarding renewal of long-term water contracts for the Orange Cove and other Friant Unit irrigation districts for the Central Valley Project.

Finally, I would like to respond to your request that I discuss in more detail the benefits and disadvantages of applying NEPA to extraterritorial actions of U.S. agencies. First, EPA is convinced of the environmental, and frequently economic, benefits of carrying out environmental reviews for overseas U.S. Federal agency actions. Certainly, the goals and purpose of NEPA should be a basis for our activities in this area. Key elements of NEPA offer an excellent model for environmental reviews generally. These include assessing both direct and indirect effects, identifying alternatives, and coordination with other government programs and projects.

However, as I mentioned at the hearing, the Administration has not yet developed a position on applying NEPA to overseas U.S. activities in the same manner as it is currently applied to domestic U.S. activities. EPA believes such an application of NEPA should be considered carefully, since the rationale for Executive Order 12114 applies at present.

First, applying the existing procedural requirements of NEPA internationally could limit the flexibility which agencies now have to use other kinds of environmental review documents (e.g., environmental impact assessments required by other countries or international organizations) in order to assess and document environmental impacts of proposed actions overseas. Agencies would have to comply with the current procedural requirements in the CEQ regulations regarding the format of enviromental assessments and environmental impact statements, EIS filing and public comment, and other areas.

Another probably more important issue to consider is that application of existing NEPA requirements could raise sovereignty issues or create difficulties for U.S. foreign policy. Likewise, NEPA public disclosure requirements -- so critical to the success of NEPA here in the U.S. -- could conflict with procedures followed in other countries. These requirements could subject overseas U.S. actions to litigation in the U.S., while it is not clear whether litigation would be allowed in the country where the action is being taken.

My over-all concern is to increase improved environmental decision-making for U.S. projects, and U.S. funded projects, at home and abroad. I point out the above reservations because, in my opinion, they are deserving of discussion when contemplation of NEPA application to international activities is underway. We need to take a closer look at what administrative and/or legislative changes are needed to address problems which have been identified regarding U.S. actions overseas.

I hope this will be useful to you. Please contact me if I can be of further assistance.

Sincerely,

Jennifer Joy Wilson
Assistant Administrator
for External Affairs